

(17,008.)

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 423.

WILLIAM STEPHENS, MATTIE J. AYERS, STEPHEN G.  
 AYERS, JACOB S. AYERS, AND MATTIE AYERS APPEL-  
 LANTS,

*vs.*

THE CHEROKEE NATION.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
 TERRITORY.

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1 In the United States Court in the Indian Territory, Northern District, Muscogee, I. T.

Be it remembered that on the 29th day of January, A. D. 1897, came into the office of the clerk of this court for the northern district of the Indian Territory, at Muscogee, Indian Territory, William Stephens, Mattie J. Ayers, Jacob Sherman Ayers, and Mattie Ayers, by their counselors and solicitors, George A. Grace and James B. Forrester, Esqs., and file their application for citizenship in the Cherokee nation, Indian Territory, affidavit for an appeal to this court from the decision of the United States commissioners on the 16th day of January, 1897, denying them and each of them admission and enrollment as citizens of the said Cherokee nation, and all the evidence in the case submitted to said commission by said parties and the Cherokee nation.

The application for citizenship is in words and figures, to wit:

*Petition of William Stephens and Others for Admission to Citizenship in the Cherokee Nation, Indian Territory.*

VINITA, IND. TER., August 1st, 1896.

To the U. S. commissioners to the five civilized tribes:

2 Your petitioners, William Stephens, Mattie J. Ayers, Stephen Grant Ayers, Jacob Sherman Ayers, and Mattie Ayers, present this their petition for admission to citizenship in the Cherokee nation, and allege that the petitioner William Stephens is a Cherokee Indian by blood, and that Mattie J. Ayers is his daughter, born in lawful wedlock, and that Stephen Grant Ayers, born January 1st, 1879; Jacob Sherman Ayers, born January 5th, 1881, and Mattie Ayers, born April 9th, 1883, are the children of Mattie J. Ayers, born in lawful wedlock, and are the grandchildren of William Stephens, the petitioner.

Your petitioners have always claimed citizenship in the Cherokee nation, and on the faith of their claim have expended about \$10,000 in improvements on their claims now occupied by them in Cooweescoowee district, Cherokee nation, Indian Territory.

The petitioner's (William Stephens') mother was named Sarah Ellington Shoeboots, who was the daughter of Shoeboots, whose Indian name was Te-as-ki-yarga, a full-blood Cherokee Indian. William Ellington Shoeboots, the uncle of petitioner William Stephens, was the brother to the mother of petitioner William Stephens and the son of Shoeboots, whose Indian name was Te-as-ki-yarga. The said William Ellington Shoeboots' name appears on the now resident old settlers' rolls of Cherokees for the year 1851, and has he drawn from the Cherokee nation his *per capita*. The

3 grandfather of petitioner William Stephens, Te-as-ki-yarga, died before the treaty of 1835. The claim to citizenship of these petitioners has been duly presented to the Cherokee authorities, as required by the laws of said Cherokee nation, and has been rejected,

and the testimony then presented to sustain their said claims is hereto annexed and submitted to sustain the facts stated in this petition. John L. McCoy, William Ellington Shoeboots, and John Harnage, whose affidavits are herewith submitted, as aforesaid, are now dead and were dead at the time of the passage of the act of Congress giving your commission power to hear and determine the claims of persons for citizenship.

The petitioners, for a fuller statement of the facts, submit the following statement of William Stephens:

I reside now and have for the past 24 years resided in the Cherokee nation, eight miles west of Coffeyville, in the State of Kansas. I was born in Clark county, Ohio, on the 9th day of December, 1827. My mother's maiden name was Sarah Ellington Shoeboots; she was a half-breed Cherokee Indian by blood.

4 The story of my mother's blood relationship among the Cherokees is somewhat romantic, which I can only state from what she told me and from general reputation of the pedigree of the family. At an early day, about the year 1780, the exact date I cannot state, my grandmother at that time living near Mount Sterling, Kentucky, at a place called Fort Morgan—the Cherokees then occupied territory in the States of Georgia, Tennessee, North Carolina, and South Carolina—the Cherokees made an assault on the village where my grandmother lived at that time, she being then only 16 years of age, and, among others, they took my grandmother into captivity, and subsequently one of the raiding band took her to be his wife, according to the customs, usages, and laws of the Cherokees. The name of this full-blood who took her to wife was Shoeboots, who was known to the tribe, in their dialect, by the name of Te-as-ki-yarga.

From this union there were born three children, viz., William, Sarah (my mother), and John, born in the respective years of 1801, 1796, 1794, all of whom were born on Hightower river, in the State of Georgia.

5 In the year 1802 my grandmother's people, hearing of her whereabouts, went to the Cherokees and to her husband and prevailed on him, my grandfather, to allow his captive wife and children to return with them on a visit to her people and the scenes of her childhood and native land.

Upon solemn promise from her friends that they would permit her to return with her children to her husband in a certain number of moons, the husband assented to the visit.

The persuasion of relatives and friends dissuaded her from returning to her husband, and, surrounded by white relatives, in the year 1840, she died.

My uncle William remained in Kentucky until after my mother's marriage to my father, in Kentucky, in the year 1820. In the year 1825 my mother moved to Ohio, and about the year 1827, hearing of the death of her father, she returned to the place of his death and received her distributive share of his estate.

At 21 years of years of age I left Ohio and moved to the State of Illinois. This was in the year 1849. My mother moved to Illinois,

where I lived, in 1852. We all lived there until 1870. Louis Downing was then chief of the Cherokee nation. In that year he issued an invitation to all Cherokees not then residing in the Cherokee nation to return to their people and home, and, in pursuance of this invitation, we moved to the Cherokee nation, and as soon as practicable I filed a petition for my mother, myself, 6 and family with the proper Indian authorities, stating the facts constituting my rights as a Cherokee citizen and praying for citizenship, and from that time until the present my family and I have continually resided in the Cherokee nation. I have 400 acres of land fenced and in cultivation, with houses built thereon, the aggregate value of the improvements put thereon being about \$1,200. This includes the preparation of the land for cultivation. All I have is here among my people. In speaking of my family, it is proper to say that I have only one child living, and she is married to a man named Christopher C. Ayers, to whom several communications, to which attention will hereafter be called, are addressed.

From 1873 to 1887 my claim to citizenship extended, and I have always had a firm reliance in the justness of my cause and ultimate admission to full citizenship in the Cherokee nation. There has never been a doubt that I am a lineal descendant of Shoeboots, who was a full-blood Cherokee. I am one-fourth Cherokee Indian by blood.

I have never been treated as an intruder, never served with any process to quit the country as such, and have been treated partially as a citizen, and at one time, to wit, in the year 1873, I was permitted to vote and participate in the election. My mother was living with me when she died, in October, 1875.

I hereto attach exhibits, properly designated, so that your 7 honorable body may at once observe the true condition of my claim.

Your attention is first called to my petition for citizenship, filed April 22, 1879, attached hereto, marked Exhibit "A;" letter of John B. Jones, U. S. agent for the Cherokees, dated Dec. 6, 1873, marked Exhibit "B;" the affidavits of John L. McCoy, an old Indian, who was acquainted with my family from my grandfather down, marked respectively Exhibits "C," "D," and "E," and dated respectively January 31, 1866, February 15, 1888, and May 28, 1891; the affidavit of my mother's brother, William Ellington Shoeboots, giving a full and complete history of my family; he was in 1852 recognized and became a citizen of the Cherokee nation, said affidavit being marked Exhibit "F." The commission on citizenship, June 16, 1888, referred my claim to citizenship, on a technicality upon the construction of an act therein mentioned, to the council of the Cherokee nation, through the then chief of said nation.

Mark well the language of the commissioners' report: "We are, however, satisfied from the testimony in this cause that William Stephens, the applicant, possesses Cherokee blood, as his uncle, William Ellington Shoeboots, appears now on the resident old settlers' roll of Cherokees for the year 1851, and that he, William

- 8 Ellington Shoeboots, is a son of old Te-as-ki-yarga, a Cherokee Indian, who died before the treaty of 1835, who is the grandfather of William Stephens." Exhibit "F."

November 12, 1887, John Harnage made a statement of my family history, showing my rights to citizenship in the Cherokee nation, marked Exhibit "H." November 3, 1888, the citizenship commission reported their reasons for not readmitting me, as will be found in Exhibit "I." On November 14, 1890, the then chief of the Cherokees sent a special message to the Cherokee council, urging that body to admit me to full citizenship. I call your attention especially to this message, as set out in Exhibit "J." I also attach hereto, in the form and the manner above set out, the different communications from various persons, official and unofficial, in relation to my claim, to the end that your honorable body may be fully apprised of all the circumstances in relation to my claim.

I have also in my possession several private letters, which are not hereto attached, which are directed to my son-in-law, C. C. Ayers, from private sources, which will be delivered to the commission if they desire the same. They relate only, however, to the progress and condition of my claim from time to time, and therefore are not considered strictly official.

- 9 Under the agreement entered into between the commissioners of the United States and the Cherokee nation, and ratified by Congress and the national council, "all persons not recognized citizens of the Cherokee nation are to be paid for their improvements when the same is adjusted and they ejected from our country."

I have refused such payments for my improvements, although tendered to me by the Cherokee nation, for the reason that I am a Cherokee by blood, and therefore ought to be admitted to full citizenship.

It will be seen that I am not strictly an intruder. I am a Cherokee Indian by blood and am in the Cherokee nation by the invitation of the chief of the Cherokees, as aforesaid.

I desire further to say that I have never received or claimed one cent from any monies paid my people in either Georgia or the Cherokee nation.

My claim for citizenship is now before you. Now nearing the end of life, after spending nearly a quarter of a century among my people in the Cherokee nation, where I have reared my children, I appeal to you to consider my claim for citizenship and accord me the rights to which I am, as a Cherokee, entitled.

- 10 Relying upon the merits of my cause, and with the firm belief that you will deal equitably with me, this petition is respectfully submitted.

WILLIAM STEPHENS.  
MATTIE J. AYERS.  
STEPHEN GRANT AYERS.  
JACOB SHERMAN AYERS,  
MATTIE AYERS,

Samuel M. Rutherford, United States marshal, northern district,  
Indian Territory.

Main office: Muscogee.

District offices: Vinita, Tahlequah, Miami.

*Terms of Court.*

Muscogee:

First Tuesday in May.

First Tuesday in December.

Vinita:

First Tuesday in February.

First Tuesday in October.

Miami:

First Tuesday in April.

First Tuesday in November.

Tahlequah:

Second Tuesday in April.

Second Tuesday in November.

TAHLEQUAH 8, 14, 1896.

Grace & Forrester, attorneys-at-law, Fort Smith, Ark.

GENTLEMEN: Enclosed find citizenship papers of William Stephens & others. The chief would not sign the petition himself, but had Mr. Jno. L. Adair, the executive sec., receipt me for them. No  
11 charges. If there is anything else I can do for you, let me know.

Yours truly,

R. B. RUTHERFORD, JR.

*Citizenship Document Receipt.*

EXECUTIVE DEPARTMENT, CHEROKEE NATION,  
TAHLEQUAH, INDIAN TERRITORY, Aug. 14, 1896.

Received from Rob't Rutherford, Jr., copies of the following documents, to wit:

The "petition of William Stephens and others to the U. S. commission to the five civilized tribes for admission to citizenship in the Cherokee nation, Indian Territory," consisting of 20 printed pages, certified to by ——— as true and correct copies of the originals, and constituting all of the testimony submitted to the Dawes commission in support of the claim of William Stephens and others for Cherokee citizenship.

By JOHN L. ADAIR,  
*Executive Secretary, Cherokee Nation, Indian Territory.*

Said above-named petitioners state that the facts stated in the foregoing petition are true, as they verily believe.

Signatures:

WILLIAM STEPHENS.

MATTIE J. AYERS.

STEPHEN GRANT AYERS.

JACOB SHERMAN AYERS.

MATTIE AYERS.



Sworn to and subscribed before me this the 4th day of August, A. D. 1896.

[SEAL.]

C. H. LOWERY,  
Notary Public.

Com. expires April 5, 1898.

12 The affidavit for appeal is as follows :

Before the honorable commission to the five civilized tribes.

WILLIAM STEPHENS ET AL.	} Affidavit for Appeal.
vs.	
THE CHEROKEE NATION.	

Now comes the said William Stephens *et al.*, applicants for citizenship in this case, by James B. Forrester, their attorney, and pray an appeal from the decision of the honorable commission to the United States district court, as provided by the act of Congress approved June 10, 1896 ; and the said James B. Forrester, being duly sworn and acting on behalf of said applicants, says that the appeal prayed for in this case is not asked for purpose of delay, but that justice may be done the appellants.

JAMES B. FORRESTER.

Sworn to and subscribed to before me this the 15th day of December, 1896.

[SEAL.]

THOS. E. WARD, N. P.

Com. ex. 12, 23, 1897.

(Endorsed as follows :) Filed Jan. 29, 1897. Jas. A. Winston, clerk.

13 The petition for appeal is as follows :

In the United States Court in the Indian Territory, Northern District, at Muscogee, Ind. Ter.

WILLIAM STEPHENS, MATTIE J. AYERS, STEPHEN GRANT AYERS,	}
Jacob Sherman Ayers, and Mattie Ayers, Appellants,	
vs.	
THE CHEROKEE NATION, Appellee.	

Application for an allowance of an appeal and petition for citizenship, etc.

Now come the appellants, William Stephens, Mattie J. Ayers, Stephen Grant Ayers, Jacob Sherman Ayers, and Mattie Ayers, and petition the court to grant an appeal in said cause from a decision of the commission to the five civilized tribes created and empowered to treat with the five civilized tribes of Indians, to wit, the Cherokees, the Creeks, the Choctaws, the Chickasaws, and Seminoles, and to pass upon and decide application for citizenship in said five

civilized nations; which decision by said commission was rendered by authority of an act of Congress passed and approved June 10, 1896, and by which decision, on the 24th day of November, A. D. 1896, at Fort Smith, Arkansas, the aforesaid appellants were denied their rights to citizenship in the Cherokee nation, Indian Territory.

The facts relied on to sustain their claim to citizenship in 14 the Cherokee nation aforesaid are as follows, to wit: That the said William Stephens is a Cherokee Indian by blood, and that the said Mattie J. Ayers is his daughter, and the other petitioners are the children of Mattie J. Ayers and grandchildren of the said William Stephens, all born in lawful wedlock. The mother of William Stephens, whose maiden name was Sarah Ellington, was the daughter of Clarinda Ellington. Said Clarinda was the wife of a well-known Cherokee of the full blood, named Shoe-Boots, whose Indian name was Te-as-ki-yarga. His rights to citizenship was never denied and always exercised by him. He died prior to the treaty of 1835. The said Shoe-Boots and his wife Clarinda had three children, to wit, John, William, and Sarah, the latter being the mother of petitioner Stephens. The said Sarah married Robert Stephens, the father of the petitioner. He was a full-blooded white man, thus making petitioner Stephens one-fourth Cherokee and three-fourths white by blood, his grandmother, Clarinda, being a white woman. William Ellington Shoe-Boots, a brother of petitioner Stephens' mother, was on the now resident old-settler rolls of Cherokees. The proofs is conclusive as to the Cherokee blood of the petitioners. The petitioners have always claimed citizenship in the Cherokee nation, and on the faith of their claims have expended about \$10,000 in improvements now occupied by them in the Cherokee nation. The petitioner

15 Stephens has resided in the Cherokee nation with his family for the past twenty six years. The above facts are sustained by the affidavits of John L. McCoy, William Ellington Shoe-Boots, and John Harnage, all of whom died before the passage of the act of Congress authorizing said commission to pass upon citizenship cases. They are also sustained by the documents filed and annexed to the petition filed before said commission as well as by the affidavits of Abram Shoe-Boots, C. C. Ayers, Cap. William Jackson, and R. F. Wiley; all of which facts and proof were prior to the 10th day of September, A. D. 1896, filed with and submitted to said commission for its consideration and decision, and a copy of said application and testimony was served on the chief of the Cherokee nation prior to September 10, 1896.

The errors of the commission in rejecting the claims of said appellants for citizenship are the grounds for appeal to this court, to wit:

First. The commission erred in rendering its decision on said claims adversely to appellants and against the proof submitted by said appellants.

Second. The commission erred in refusing the appellants the right and privilege of examining the proof submitted by appellee



16 in support of the answer filed by the appellee and denying appellants the right of filing replication to appellee's answer and producing proof in rebuttal of the proof submitted by appellee.

Third. The commission erred in denying the appellants the right of a trial of their claims by a competent jury.

Fourth. The commission erred in refusing the appellants the right to be present in person or by attorney during the trial and determination of their claims before said commission.

Fifth. The commission erred in examining the claims and proof of appellants and denying the same, while the commission was not clothed with any legal authority or jurisdiction to render a decision on said claims and deny the same.

Sixth. The act of Congress approved June 10, 1896, was unconstitutional and had no power or legal right to confer jurisdiction on said commission to try and determine the rights of citizenship of said appellants, and said commission erred in determining the rights and denying the same to said appellants.

Wherefore the appellants in this cause pray that an appeal be granted to this court, and that a trial *de novo* be granted to appellants, and that appellants be permitted to introduce new testimony,

17 and that an order be made requiring said commission to send all pleadings, papers, and records filed before them in this cause to this court, and that The Cherokee Nation, the appellee in this cause, be cited to appear at this court and plead and defend against the appeal, and show why the appellants should not by the rules, orders, and decisions of this court be adjudged entitled to citizenship in the said Cherokee nation; and the appellants will ever pray.

GEO. A. GRACE AND  
JAMES B. FORRESTER,  
*Attorneys for Appellants.*

(Endorsed as follows:) Filed Jan. 16, 1897. Jas. A. Winston, clerk.

18 In the United States Court in the Indian Territory, Northern District, Muscogee, I. T.

Be it remembered that at a court of the United States in the Indian Territory for the northern district, begun and holden on Monday, the first day of December, 1896, at the United States courtroom, in the town of Muscogee, in the Creek nation, in the Indian Territory, the Honorable Wm. M. Springer, judge of said court, presiding and holding said court, the following proceedings were had, to wit:

19

(FEB'Y 13, '97.)

WILLIAM STEPHENS, MATTIE J. AYERS, JACOB SHERMAN	} # 213.
Ayers, Mattie Ayers, Appellants,	
vs.	
THE CHEROKEE NATION, Appellee.	

It appearing to the court that the above-named appellants, William Stephens, Mattie J. Ayers, Jacob Sherman Ayers, and Mattie Ayers, have jointly and severally appealed to this court, within the time prescribed by law, from the decision of the "United States commissioners to the five civilized tribes" in refusing to admit and enrol them and each of them to citizenship in the Cherokee nation, in the Indian Territory, and said appeal appearing in due form and being accompanied with all the evidence had and presented to said United States commission in their application for citizenship, a re-opening of the case here for trial is granted, and both the parties hereto may take additional evidence in said case by depositions or otherwise, to be agreed upon by them, to be submitted in writing; and it is further ordered that R. P. de Graffenried, Esq., be, and he is hereby, appointed as special master in chancery in this case to make a report to this court in writing, at the earliest practicable time, from the evidence on file or that which may hereafter be duly taken, of the status of said appellants to said Cherokee nation, together with all the facts proven by said evidence touching their said application for citizenship, as aforesaid.

21 The following depositions and documentary evidence were read on the final hearing of this cause, which was all the evidence adduced:

*Depositions and Documentary Evidence of Appellants.*

(EXHIBIT "A.")

Before Cherokee commission on citizenship.

FORT GIBSON, C. N., April 22, 1879.

WILLIAM STEPHENS	} Claiming Citizenship.
vs.	
CHEROKEE NATION.	

Claimant respectfully presents that he is a Cherokee Indian by blood, derived from his mother, whose maiden name was Sarah Allenton, who was the daughter of Clarinda Allenton, who (claimant's grandmother on the mother's side) was the wife at one time of a well-known Cherokee named "Shoe Boot," whose Indian name was well known in the war of 1812 with the Creeks and the United States. Claimant's grandmother aforesaid was a white woman taken by the Cherokees during one of their early forays, afterwards taken by the said "Shoe Boot" as his wife, and finally discovered

22 or was discovered by her family, to whom she returned with children of herself and Shoe Boot, one of which children was claimant's mother, then quite young. Claimant's own uncle, William Allenton, now living in Bosque county, near Clifton Mills P. O., Texas, was recognized as a Cherokee by the old-settler Cherokees and drew "*per capita*" as such at their payment of 1851-'2 for himself and family, and to the record of such fact, as well as to himself, claimant respectfully refers, his (claimant's) said uncle claiming and being recognized as the son of the said "Shoe Boot," a well-known Cherokee.

Respectfully submitted.

WILLIAM STEPHENS.

23

UNITED STATES AGENT FOR CHEROKEES,  
TAHLEQUAH, C. N., Dec. 6, 1873.

This is to certify that Sarah J. Dictus and William Stephens have brought proof to show that they have filed their claims for citizenship before the national council through the proper channel, but that no action was reached on their cases.

I have also information that there is good evidence to show that these parties are Cherokees by blood. They will therefore not be interfered with until further notice from this office.

JOHN B. JONES,  
U. S. Agent for Cherokees.

I hereby certify the above and foregoing to be a true and literal copy from the files of this office.

This the 6th day of February, 1880.

WM. P. ASMUS,  
Ass't Exec. Sec. C. N.

24 Personally appeared before me, John Q. Tufts, U. S. Indian agent, John L. McCoy, a Cherokee citizen, who, being duly sworn, makes the following statement in regard to the right to citizenship in the Cherokee nation of William Stevens:

I knew the mother of William Stevens in the year 1827 in the old Cherokee nation, east of the Mississippi river. I knew she was the acknowledged daughter of Shoe Boots, a full-blooded Cherokee Indian, whom I have seen frequently at the council of the nation. When I first saw her it was at my father's house, who lived at the capitol of the Cherokee nation. She came there en route from the State of Kentucky to settle her father's estate and received her portion. The next time I saw her was at Tablequah, the present capitol of the Cherokee nation, in the fall of 1874 or '75. Her son was with her, who is the William Stevens claiming citizenship in the Cherokee nation.

JOHN L. MCCOY.

This 31st day of January, 1880.

JOHN Q. TUFTS,  
U. S. Indian Agent.

COMMISSION ON CITIZENSHIP,  
TAHLEQUAH, I. T., Feb. 15, 1888.

WILLIAM STEPHENS }  
vs.  
CHEROKEE NATION. }

*Supplementary Statement of John L. McCoy.*

The affidavit of John L. McCoy, taken before Tehee court, so called, read to him and acknowledged by him as his statement made before said court in the fall of 1882.

The first time that I saw any of the children of Mrs. Stephens was here at Tahlequah; was some time before the Tehee court above spoken of. I have no personal knowledge that William Stephens is the son of Mrs. Stephens, other than what Mrs. Stephens told me. I think Mrs. Stephens' given name was Annie. When I saw Mrs. Stephens here at Tahlequah I would suppose she was about 70 or 75 years old from her appearance. I don't know whether she had any other children other than William or not. My information is that the mother of Annie Stephens was a white woman. I am acquainted with William Stephens, the applicant. Mrs. Stephens, after I saw her here, went back to Kansas, and, I understand, died there. If William Stephens was the son of Mrs. Annie Stephens he would then have been the grandson of Shoe Boots. I am 75 years old, and am a resident and citizen of the Cherokee nation.

26 Mrs. Annie Stephens was not recognized by any Indians here as a Cherokee except myself, that I know of. I understand that Mr. Stephens informed me that they removed from the State of Illinois to Kansas.

*In re the Indian Citizenship of WM. STEPHENS, now Resident of the Cherokee Nation, Indian Territory.*

On this 28th day of May, A. D. 1891, personally appeared before me, James Brizzolara, a notary public within and for the county of Sebastian, in the State of Arkansas, John L. McCoy, a resident of Canadian district of the Cherokee nation, Indian Territory, who, being duly sworn, deposes and says he is now 71 years of age and a Cherokee Indian by blood, and recognized as a citizen of the Cherokee nation; that he has known William Stephens, who is a petitioner for citizenship in and among said Cherokee tribe of Indians, for about nineteen years; that he knew the mother of said William Stephens. She was a half-breed, or of half-blood Cherokee Indian. He knew his mother in the old Cherokee nation, and first met her there more than sixty years ago. She has, and was then, been recognized as an Indian of half blood and of the Cherokee tribe of Indians. He knew the mother and also the maternal grandmother of the said William Stephens. The father of the mother of William Stephens, the grandfather of Mr. Stephens, was a leading man among the old Cherokees in the old Cherokee nation,

27 now a part of Georgia. He was a full-blood Cherokee Indian by blood, and was called Capt. Shoe-Boots Oo-toh-se-yah-kee. He was about 6 ft. 2 or 3 inches high, of slender build, erect, of very dark complexion, straight black hair, and would weigh about 180 or 200 pounds. He has often seen Capt. Shoe-boots and deposes herein to matters within his personal knowledge. The mother of Mr. William Stephens was the daughter of Captain Shoe-Boots, begotten in lawful wedlock, and Mr. William Stephens is the legitimate son of the daughter of said Captain Shoe-Boots, and therefore the petitioner is one-fourth Cherokee Indian by blood.

JOHN L. McCOY.

Sworn to and subscribed before me this May 28, 1891.

JAMES BRIZZOLARA,  
Notary Public for Sebastian Co., Ark.

Commission expires January 27, 1894.

28

OFFICE OF COMMISSIONER ON CITIZENSHIP,  
TAHLEQUAH, C. N., Sept. 3, 1883.

WILLIAM STEVENS }  
vs. }  
THE CHEROKEE NATION. }

WILLIAM ELLINGTON SHOEBOOTS, witness produced in open court and being duly sworn on part of the claimant, testifies as follows:

My name is William Ellington Shoeboots. My age is 84 years next October. I reside in Bowie county, Texas. I am a Cherokee by blood. My father was Shoe Boots, and I received my Cherokee blood from him. His Cherokee name was Te-as-ki-yarga. My mother's name was Clarinda Ellington, a white woman. I was born on Hightower, in Georgia. I went from Georgia into Kentucky. My father sent a negro and some ponies with me and my mother to Kentucky to see some of my mother's people. We lived near Mount Sterling, Ky. I lived there with an uncle of mine, Jacob Ellington, a brother of my mother. I was living in Kentucky with claimant's mother, and they went to Ohio. I think they lived there near Hillsboro. William Stevens was the son of Rob't Stevens, a white man. William Stevens' mother was my sister, and Shoe

29 Boots (Te-as ki-yarga) was her father. Shoe Boots was a Cherokee.

Cross-examination by solicitor :

After I left Georgia and went to Kentucky I never came back to Georgia. I had one brother and one sister. There were three children of us. From Kentucky I went to Illinois. I married there, and then moved to Missouri. Then I went to Texas and stayed there; lived here awhile in the country, at Menfuld's, in Flint, and I have been here four or five times. I came here and drew my old-settler payment in 1852. Claimant's mother is now dead. She died up here at Russell Creek, near Chetopa. Then I heard from

Jerry Odle where claimant was, and then we sent letters back and forwards. It was understood that my father was a full-blood Cherokee. I recollect seeing my father, but I was so little that I didn't recollect much about him. I was the youngest of the three children. The other children are dead. I must have been two or three years old when my mother and I went from Georgia to Kentucky. I never saw my father after I left him and went to Kentucky.

By the COURT:

30 My mother told me I was a Cherokee. There is a man here not far off that knew my father. I don't recollect how old I was when my mother died. I don't recollect that I heard of my father's death. The negro that came out to Kentucky with us never went back. We kept him to wait on mother.

How long since you became acquainted with claimant?

I lived near his father in Kentucky. His father was a tanner. I have known him six or seven years. I think I saw the claimant when he was a child. I am not certain, however. It might have been his brother, Jake. I don't think his brother Jake is living.

WILLIAM ELLINGTON <sup>his</sup> x SHOE BOOTS.  
mark.

31

*Application for Citizenship.*

To the honorable the commission on citizenship.

GENTLEMEN: The undersigned, your petitioner, this day makes this his application for readmission to citizenship in the Cherokee nation, in accordance with the constitution and with an act of the national council, approved Dec. 8, 1886, creating your commission, and respectfully makes the following statement of the grounds of his application, to wit: That William Stephens is a nephew of one William Allington or Shoe Boots, who the undersigned firmly believes was duly enrolled upon the old-settler census roll of Cherokees by blood, citizens of the Cherokee nation, taken and made in the year 1851. The undersigned hereby presents the above facts as the lawful grounds for this his application for Cherokee citizenship by blood and respectfully awaits the time when his application shall be truly heard and tried in accordance with the aforesaid law. Age, 60 years; post-office, Coffeyville, Kansas; family, with their relationship attached, is as follows: Number, one; name, William Stephens; sex, male; age, sixty.

In witness of which application I hereunto set my hand on this the 6th day of June, 1887.

WILLIAM STEPHENS.

C. H. TAYLOR, *Attorney.*



Office commission on citizenship.

TALEQUAH, C. N., June 16, 1887.

Docket.	No. family.	Name.	Age.	Sex.	Residence.	Att'y.
220	1	William Stephens vs. Cherokee Nation. Filed June 16, 1887.	60	Male.	Coffeyville, Ks. Applicants for Cherokee citizen- ship; rolls 1851, O. S. Ancestor, William Shoe- Boots.	C. H. Taylor.

The above case was regularly submitted by plaintiff's attorney, Mr. C. H. Taylor, Mr. Stephens alleging his Cherokee ancestor, one William Shoe Boots, who, the testimony shows, was his uncle and not an ancestor under the law, where it says a lineal descendant (sec. 7 of the act of Dec. 8, 1886); consequently this commission

33 cannot readmit such persons to Cherokee citizenship. We are, however, satisfied from the testimony in this case that William Stephens, the applicant, possesses Cherokee blood, as his uncle, William Ellington Shoe Boots, appears on the now resident old-settler rolls of Cherokees of the year 1851, and that he (William Shoe Boots) is the son of old Te-as-ki-yarga, a Cherokee Indian, who died before the treaty of 1835, who was the grandfather of the applicant, William Stephens. William Stephens has failed, under the above-quoted seventh section of the act of December 8, 1886, to establish his citizenship in the Cherokee nation, as is therein required, and is therefore, under the law, declared not to be a citizen of the said Cherokee nation.

J. T. ADAIR,  
*Chairman Commission.*  
D. W. LIPE,  
*Commissioner.*  
H. C. BARNES,  
*Commissioner.*

The above case reconsidered by the commission and reported to the principal chief, the same as in the Sayer case, page 197 of this book.

CONNELL ROGERS,  
*Clerk Com. on Citizenship.*

34

OFFICE COMMISSION ON CITIZENSHIP,  
TAHLEQUAH, I. T., Nov. 3, 1888.  
EXECUTIVE DEPT' C. N., TAHLEQUAH, Nov. 18, 1890.

I hereby certify that the foregoing is a true copy of the record of the late commission court, which record is now on file in this office.

C. J. HARRIS,  
Ass't Sec. C. N.

Copy of finding of the commissioners' court in case of William Stephens vs. Cherokee Nation.

35

NOVEMBER 12, 1887.

WILLIAM STEPHENS }  
vs. } Application for Cherokee Citizenship.  
CHEROKEE NATION. }

JOHN HARNAGE, after being duly sworn, states as follows: I am 70 years old. I reside at Kilgore, Texas. I have met the applicant, William Stephens. I was acquainted with William Ellington. He proved himself to be a Cherokee. In the year 1851 he received annuity from the Cherokee government. His name should appear upon the roll of 1851, western Cherokees. I generally met Ellington at the court-house, in Flint district. I have no knowledge of William Stephens being a relative of Shoe Boots. I never heard him spoken of. I have heard him speak of one or two sisters, but I do not remember the names. I am not acquainted with Ellington's family. I have a faint recollection of seeing William Shoeboots.

Cross-examination:

The investigation of Ellington's case was before a committee of three persons appointed by the Cherokee nation to determine who were entitled to draw *per capita* money. The committee was

36 composed of John Harnage, William Drew, and Louis Rogers.

He was identified by witnesses who knew him and gave his Indian name. The evidence in the Ellington case shows that his mother was a white woman. I don't think that the evidence at the time of the investigation shows that Ellington had any brother. Ellington, who was the son of Shoe Boots, takes the maiden name of his mother, Ellington. The evidence before the committee was very conclusive in Ellington's case as to his Cherokee blood. I do not know what became of Ellington after this. I know nothing of the relationship existing between Stephens and Ellington, only what Stephens has told me himself. I became acquainted with Stephens some three or four years ago.

Statement of John Harnage before senate committee on citizenship.



COMMISSION ON CITIZENSHIP,  
CHEROKEE NATION, IND. TER.,  
TAHLEQUAH, Nov. 3, 1888.

Hon. Joel B. Mayes, principal chief, Cherokee nation, Tahlequah, Ind. Ter.

SIR: We, the commission on citizenship, have the honor to lay before you the application for citizenship of William Stephens and William Shoe Boots and family.

Upon examination of the testimony we are fully satisfied  
37 that these parties possess Cherokee blood and are the parties or persons whom they represent themselves to be. William Stephens alleges as his Cherokee ancestor, from whom he has endeavored to prove his rights to citizenship, one William Shoe Boots, and William Shoe Boots alleges as his Cherokee ancestor from whom he has endeavored to establish his citizenship, one John Shoe Boots. These names, William and John Shoe Boots, fail to appear on any of the rolls of Cherokees mentioned in the 7th section of act of Dec. 8, 1886, or those mentioned in act of February 7, 1888.

William Shoe Boots is a son of old Te-as-ki-yarga, a Cherokee Indian who died prior to the treaty of 1835, and the brother of Lizzie and Polly Boots, whose name appears on the emigrant roll of Cherokees in Delaware district for the year 1852 as Cherokees.

Under the 7th section of the act of Dec. 8, 1886, we cannot admit William Shoe Boots and family and William Stephens to Cherokee citizenship, for they have not proven a "lineal descent from a Cherokee ancestor whose name appears on the roll of Cherokees mentioned in the before-cited laws.

William Stephens is the grandson of old Te-as-ki-yarga, before mentioned, and the nephew of William Ellington Shoe Boots, whose name appears on the now resident "old-settler" roll of Cherokees.

38 We respectfully report these two cases to you for your consideration and such action as you may deem wise in the premises.

Very respectfully, your obedient servants,

J. T. ADAIR, *Ch'm*,  
D. W. LIPE,  
H. C. BARNES, *Com*.

Referred to the National Council.

J. B. MAYES, *Prin. Chief*.

Dec. 4, 1888.

EXECUTIVE DEPT' CHEROKEE NATION, I. T.,  
TAHLEQUAH, Nov. 15, 1890.

To the honorable national council.

GENTLEMEN: I herewith send papers setting forth the claim of William Stephens to Cherokee citizenship. While it is your duty to reject all fraudulent claims to citizenship, you should be willing

to extend to all our race the same rights with ourselves, as this country was intended for homes for the Cherokee people.

You will perceive from the report of the commission on citizenship, addressed to me, gives a clear statement of Mr. Stephens' status as a Cherokee, and it was only a technical reason why he was not admitted by said commission.

39 His right to citizenship by blood was admitted by this commission. Under circumstances connected with the matter you will find that the commission court was thoroughly satisfied with the genuineness of his claim, and another thing speaks in favor of Mr. Stephens' claim—he has never joined the notorious "Citizenship Association," but has modestly relied on what he has just cause to believe to be his rights. No doubt his claim is a just one.

Very respectfully,

J. B. MAYES,  
*Principal Chief C. N.*

(Endorsed as follows:) Filed Aug. 29, 1896. A. S. McKennon, com'r. Filed Jan. 29, 1897. Jas. A. Winston, clerk.

40 In the United States Court in the Indian Territory, Northern District, May Term, A. D. 1897.

WILLIAM STEPHENS, MATTIE J. AYERS, STEPHEN GRANT AYERS, }  
Jacob Sherman Ayers, and Mattie Ayers, Appellants, }  
*vs.*  
THE CHEROKEE NATION, Appellee. }

*Stipulation as to Evidence on File, &c., in Case Cherokee Nation.*

It is hereby agreed and stipulated by and between Hutchings and English, attorneys representing the Cherokee nation, and Grace and Forrester, attorneys representing the above-named appellants in the above-entitled cause, that all the affidavits, depositions, and documentary papers, records, and exhibits offered in evidence before the Dawes commission by the appellants and claimants to citizenship in the Cherokee nation in the above cause on file in this court, and all the affidavits, depositions, documentary papers, and sworn statements of persons filed with and attached to the type-written argument of counsel for appellants in this cause on file herein shall be read and considered in evidence in this case by the master and the court in this cause, subject only to exception, objection for incompetency or irrelevancy. It is further stipulated and agreed that the following certificate:

"UNION AGENCY, MUSCOGEE, I. T., March 22, 1897.

I, Dew M. Wisdom, U. S. Indian agent, certify that the names of  
112. William Shoe Boots,  
113. James Shoe Boots,  
114. Martha Shoe Boots,  
115. Isaac Shoe Boots,

116. Rebecca Shoe Boots,

117. Abraham Shoe Boots,

appear on the Cherokee old settlers' pay-roll as unclaimed shares, and that these names appear on the 'old-settler' pay-roll of 1851.

DEW M. WISDOM,

*U. S. Indian Agent,"*

may be read in evidence in this cause, subject only to exception or objection for incompetency or irrelevancy. It is further stipulated and agreed that all the affidavits, depositions, and documentary papers offered by the appellee in evidence in this cause herein before

the Dawes commission may be read and considered in evidence in this cause, subject only to exception or objection for incompetency or irrelevancy. It is further stipulated and agreed that during the pendency and progress of this cause any of the parties hereto may file additional or new testimony herein, subject to objections for incompetency or irrelevancy, but before additional or new testimony is taken or attempted to be taken the opposite or adverse counsel shall submit the questions to be propounded to the witnesses to the counsel on the opposite side, so that they may cross the interrogatories to be propounded to the witness or witnesses.

In witness whereof we have hereunto set our hands this the 25 day of March, 1897.

GRACE AND FORRESTER,

*Attorneys for Appellants.*

HUTCHINGS AND ENGLISH,

*Attorneys for Appellee.*

(Endorsed as follows:) Filed this — day of March, 1897.

43 ABEL SHOE-BOOTS, being sworn, says:

I live in Cooweescoowee district of the Cherokee nation; am the son of William Shoe Boots, who was a half-breed Cherokee. My father's mother was a white woman. My father's name and that of five children are on the old settlers' roll of 1857. My father was the uncle of William Stephens, the petitioner. I, as well as my father, always recognized their kinship with Stephens.

C. C. AYERS stated on oath that he married the petitioner Mattie J. Ayers, who is the daughter of William Stephens. He has seen Mr. Stephens' mother, who lived with Stephens at the time of his marriage. She had every appearance of being a half-blood Cherokee; has known Allen Gilbert for 15 or 20 years. Last fall a year ago Gilbert was at Tahlequah, and he and Gilbert talked of the Stephens case, when Gilbert volunteered to assist him in the matter of citizenship, and said there was no doubt of the genuineness of Stephens' claim, and introduced him to some of Gilbert's friends who could probably assist him in the matter. Since that time Stephens and Gilbert had a difficulty over a land matter.

Captain WILLIAM JACKSON on oath said that he knows Rothschild, the cattle-buyers. Stephens and Rotchild got into a quarrel  
 44 about some cattle, and Rothchild called Stephens a d—d old negro. He met Stephens' mother also at Tablequah. She told him her maiden name was Ellington, and that she had a brother named William Ellington Shoe Boots. She did not look like she had any colored blood in her. He also saw William Ellington Shoe Boots, who told him that Mrs. Stephens was his sister.

R. F. WILEY on oath says that he was attorney for the nation before the citizenship commission in 1888, when Stephens' case was before it. The proof showed that Capt. Shoe Boots, the alleged grandfather of William Stephens, had two wives at different times. His first wife was a white woman, and by this woman, he thinks the proof showed, he had four children, one of the boys named William Ellington Shoe Boots. The proof showed that the mother of William Stephens was a full sister of this William Ellington Shoe Boots, whose name appears on the old settlers' roll of 1851. After the first wife of Shoe Boots went back to Kentucky he took a negro woman for his wife. He does not recollect how many children she had;  
 45 perhaps three or four. It appears that old Captain Shoe Boots had two families, one by a white woman and the others by a negro woman. The commission was convinced that the mother of William Stephens was a full sister of William Ellington Shoe Boots aforesaid.

The accusation that William Stephens was of colored blood appears to have been suggested to his enemies by reason of the second marriage of his grandfather to an African woman, and is without foundation in fact. It is entirely clear that petitioner William Stephens' mother is the daughter of the first wife, a white woman. We send herewith a photograph of the petitioner, William Stephens.  
 Respectfully submitted.

GRACE AND FORRESTER,  
*Attorneys for Petitioner.*

46 COMMITTEE-ROOM, SENATE BRANCH OF THE  
 NATIONAL COUNCIL, Dec. 7, 1893.

To the honorable to the national council :

We respectfully beg leave to submit our report.

We have carefully examined all the proff presented in these cases and find that they are Cherokee by blood, and that they are entitled to citizenship in the Cherokee nation. Therefore we would most respectfully recommend that the accompanying bill be passed; all of which is respectfully submitted.

M. V. BENGE,  
 C. E. VANN,  
 GEORGE SANDERS, *Committee.*

J. C. DUNCAN, *Clerk.*

47. An act entitled an act "To readmit the following-named persons to citizenship in the Cherokee nation."

Be it enacted by the national council: That the following-named person- who shall return to the Cherokee nation and permanently settle therein within six months from and after the passage of this act and report to the principal chief for registration as citizens, be and they are hereby readmitted to all the rights and privileges of Cherokee citizenship, by blood:

I. William Stephens; male; age, 60 years.

COMMITTEE-ROOMS, STANDING COMMITTEE.

To the hon. the national council.

GENTLEMEN: Your committee, to whom was referred the case of Wm. Stephens and descendants, Samantha Ayers (daughter), Steven J. Ayers (grandson), Jacob S. Ayers (grandson), & Mattie Ayers, grand-daughter, after due examination, recommend that they be readmitted to citizenship in the Cherokee nation, & ask that the accompanying bill be passed in their favor.

L. DODSON,

*Chairman Standing Committee.*

WM. A. THOMPSON, *Clerk S. C.*

48

*Council Bill No. 29.*

Be it enacted by the national council That William Stephens, aged 67; Mrs. Samantha J. Ayers, age 41 (daughter), Stephen G. Ayers (grandson), age 17, Jacob S. Ayers (grandson) age 13, Mattie J. Ayers, grand-daughter, age 11, be and the same are hereby readmitted to citizenship in the Cherokee nation: Provided the said William Stephens and descendants remove with their effects to the Cherokee nation within the period of six months from the approval of this act by the principal chief.

- 49 Before the Honorables Henry L. Dawes, Frank C. Armstrong, A. S. McKennon, T. B. Cabanis, and A. B. Montgomery, commissioners.

In the Matter of Application of WILLIAM STEPHENS and Others for Citizenship in the Cherokee Nation. Nation's No., 142; Commission's No., —.

Your respondent, S. H. Mayes, principal chief of the Cherokee nation, comes now and demurs to the said application, and for the grounds thereof says:

1st. That this commission has not jurisdiction over the parties or subject-matter of this controversy and no legal right, therefore, to hear and determine the same.

2nd. That the application does not state facts sufficient, if true, to show that the applicants are entitled to citizenship.

Respondent, not waiving his aforesaid demurrer, but insisting

upon the same, for answer to said application says that William Shoe Boots, through whom the petitioners claim to derive their right to citizenship in the Cherokee nation, is not now and has not been a citizen of the Cherokee nation since the removal of said nation west to the Indian Territory, as at present located and defined; that the name of William Shoe Boots does — appear on the authenticated rolls of 1857 of said nation; that neither they nor any of their ancestors now reside or ever have resided in the Cherokee nation and Indian Territory as citizens thereof.

Respondent, for a further and complete defense to the aforesaid application, says that heretofore said applicant was made before a legally constituted court or commission on citizenship having jurisdiction over applicants for readmission to citizenship in the Cherokee nation; that the said case was tried upon its merits; that upon a final hearing judgement was duly given against the applicant and in favor of this nation. A duly certified transcript of the aforesaid proceedings and judgement are annexed hereto and made a part of this answer. Some of said proceedings, having been filed with the respondent's petition, are not included. Respondent further alleges that the case of William Shoe Boots was tried at the same time, a negro deriving his rights through the same ancestor, as shown by the decision of the commission. The depositions, affidavits of witnesses, all of whom are now dead, are also attached hereto, together with other testimony.

51 Having fully answered, your respondent asks to be hence dismissed.

S. H. MAYES,  
Principal Chief Cherokee Nation,  
By HUTCHINGS, HASTINGS AND  
BOUDINOT, Attorneys.

John L. Adair, executive secretary Cherokee nation, having been first duly sworn, states that the matters contained in the foregoing answer are true, to the best of his knowledge and belief.

JOHN L. ADAIR.

Subscribed and sworn to before me this the 9th day of Sept., 1896.

D. J. BALL,  
Notary Public.

(Endorsed as follows:) Filed Oct. 7, 1896. A. M. Jacoway, sec'y.  
Filed Jan. 29, 1897. Jas. A. Winston, clerk.

Office commission on citizenship.

TAHLEQUAH, O. N., June 16, 1887.

Docket.	No.	Names.	Age.	Sex.	Post-office.	Att'y.
	1	William Stephens vs. Cherokee Nation. Filed June 16, 1887.	60	Male.	Coffeyville, Kan. Applicants for Cherokee citizenship. Rolls 1851, O. S. Ancestor, William Shoe Boots.	C. H. Taylor.

(The following was written on the face of above:)

The above case reconsidered by the commission and reported to the principal chief the same as in the Sayes case, page 197 of this book.

CONNEL ROGERS,

*Clerk Com. on Citizenship.*

The above was regularly submitted by plaintiff's attorney, Mr. C. H. Taylor, Mr. Stephens alleging his Cherokee ancestor one William Shoe Boot, who, the testimony shows, was his uncle and not an ancestor under the law when it says a lineal descendant (sec. 7 of the act of Dec. 8th, 1886); consequently this commission cannot readmit such persons to Cherokee citizenship. We are, however, satisfied from the testimony in this cause that William Stephens,

53 the applicant, possesses Cherokee blood, as his uncle, William Ellington Shoeboot, appears on the now resident old settlers' rolls of Cherokees of the year 1851, and that he, William Shoe Boot, is the son of old Tar-ca-ki-ar-ka, a Cherokee Indian, who died before the treaty of 1835, who was the grandfather of the applicant, William Stephens. William Stephens has failed under the above-quoted 7th section of the act of December 8th, 1887, to establish his citizenship in the Cherokee nation, as is therein required, and is therefore under the law declared not to be a citizen of the said Cherokee nation.

J. T. ADAIR,

*Chairman Commission.*

D. W. LIPE,

*Commissioner.*

H. C. BARNES,

*Commissioner.*



## Office commission on citizenship.

TAHLEQUAH, I. T., Nov. 3rd, 1888.

WILLIAM SHOE BOOTS	} Applicant for Citizenship.
vs.	
CHEROKEE NATION.	

JOHN COCHRAN, after being duly sworn, states as follows: I am acquainted with the applicant. When I first saw Capt. Shoe Boots and his negro wife they came to my grandmother's house, where my grandmother *nod* I stayed, and when we went to the table to eat, the question was asked Shoe Boots if he had the woman  
54 for a slave, and his answer was that he had her for his wife.

After he was asked that question and had answered it, he was directed to another house for them to occupy, and they occupied it about two years. My mother died at that place. At that place was born a child to Shoeboots; it was a girl. In a few days he named it Ki-hu-ga. After my mother died a woman by the name of Wasus-ta came *fater* me and I went to her house. I do not recollect when Shoe Boots died. Shoe Boots never came to this country, but his wife came and lived on Honey creek, on Big Mush, in Delaware district. I was acquainted with one Tah-ku-ya-ka. At a big meeting at Red Clay was the first time I ever saw these children; they were twins; they were with these children at the time. I was acquainted with Ka-yu-ga, the sister of applicant. I was not acquainted with the younger ones. In the spring after the big meeting at Red Clay they were gathered up and sent West, and that was the last time I saw them.

## Cross-examination:

I am eighty-six years old. I live at Eu-hil-lee, in the old nation. I lived about fifty yards from Shoe Boots. Ka-hu-ga was the first child of Shoe Boots and his negro wife. The twins were both  
55 boys. Applicant was about eight or nine years old when I saw him at Red Clay. I saw the applicant about three years ago, on Honey creek, after he came West. Mother of the applicant was living at that place, and I only saw *tow* children at that time. I think Capt. Shoe Boots and others came three or four years before I saw them at Honey creek, and I never saw him any more until I saw him recently.

This boy that I saw on Honey creek with his mother was named William Shoeboots. Capt. Shoe Boots was of the Cherokee Indian tribe. Shoe Boots was my mother's uncle. Shoe Boots was of the Wolfe clan and he could not talk any English. I don't know anything about the applicant's family. I don't know when the applicant's mother died. Shoe Boots did not have any more negroes except his wife. She was rather tall, but slender made. I was with them two or three days on Honey creek when they first came out here. I understand that they lived on Honey creek til the war broke out.

HENRY EIFFERT,

Ass't Clerk Commission.

Nov. 3rd, 1888.



OFFICE COMMISSION ON CITIZENSHIP,  
 TAHLEQUAH, I. T., Sept. 28th, 1888.

EDMUND ROSS, who, after being duly sworn, on his oath states that he is a citizen of the Cherokee nation by adoption. I am seventy years old, and live in Tahlequah district. I knew Capt. William Shoe Boots back in the old nation, when he lived with Maj. Ridge. I did not know his mother and father. I knew John Shoe Boots; he was stolen out of the nation. They were free born. The first time I saw William Shoeboots after that time was about three or four years ago, and I recognized him to be the same William Shoe Boots that I knew in the old nation. It has always been my understanding that the applicant had Cherokee blood. I did not know Lewis Shoe Boots. I knew John Shoe Boots in the old nation; he was a fiddler.

I am acquainted with Mary Swagerty. I did not know her in the old nation. I don't know that she is the daughter of John Shoe Boots, tho' I have heard this. I don't remember of seeing a man by the name of Tar-se-ki-atah in the old nation. I was well acquainted with John Shoe Boots' wife in the old nation. Her name was Con-na-we-lee. Maj. Ridge raised her. They say that  
 57 she was a Cherokee. She had long black hair. She was a full-blooded Indian. I don't know that Con-no-we-la was the mother of Mary Swagerty, but I believe she was from the general appearance. I have known Mary Swagerty about four years.

## Cross-examination:

I was born at Poplar Springs, near where Chattanooga now stands. I belonged to John Ross, ex-chief of the Cherokees. Mr. John Ross moved to Ostella, Ga., and Maj. Ridge lived near Mr. Ross. John Ross, my old master, lived on the west side of Ostanala. Maj. Ridge lived on the other side of the river.

It was while I was living on the Ostanala that I became acquainted with William Shoe Boots, the applicant. The last time I saw the applicant in Georgia, I suppose he was about fourteen years old.

When I said that these parties were free born, I meant and do mean that they were reputed. John Ridge lived near Maj. Ridge, all together. I did not know a black woman that lived with Maj. or John Ridge, by the name of "Dolly." I never heard at that time who the mother of William Shoe Boots was. It was said that John Shoe Boots had Con-ne-we-lee for a wife. I did not know of it myself.

58 Mr. John Ross moved from Ostanala up to Red Clay four years prior to the emigration. Con-ne-we-lee had no children when I left and last saw her. John Shoe Boots was stolen before John Ross left Ostanala and moved to Red Clay. I know that Alex.

Vann, a white man, did have Con-ne-we-la for a wife when we left Ostanala and went up to Red Clay. I never heard of Con-ne-we-lu after this time. I don't know whether she was Creek, Cherokee, or some other tribe of Indians.

I knew William Shoe Boots a year or two when he lived with the Ridges on the Ostanala. Mary Swagerty is of about the same complexion of William Shoeboots, who is now present; she may be a little darker.

Attest :

CONNELL ROGERS,  
*Clerk Commission on Citizenship.*

WILLIAM SHOE BOOTS  
vs.  
CHEROKEE NATION.

} Application for Cherokee Citizenship.

NATHANIEL FISH, after being duly sworn, states as follows: I am not acquainted — the application. I was acquainted with old Capt. Shoe Boots. He was a relative of *me* by clan kin. At the last time I saw Capt. Shoe Boots he had with him a wife wearing ornaments like those generally worn by Cherokees, such as earrings.  
59 She was a cold-black negro. Capt. Shoe Boots was about my complexion. What caused me to know that it was his wife and that she was a negro, when we were eating dinner he and his wife sat on the same side and I sat on the other side of the table, and when they were through eating they got up and went out to another house where they usually stayed. *From* the statement I make here is from what I know and saw that makes me believe that he is a descendant of Shoe Boots. When I saw them they had no children. I cannot state that they had no children.

Cross-examination :

I knew Capt. Shoe Boots in the old nation at Lolola. I lived about a day's journey from where Shoe Boots lived. I was well acquainted with Shoe Boots and suppose that he was sixty years old when I first saw him. It was about four years after the Creek war when I saw him, and suppose it was about the year 1814. I am eighty-eight or nine years old. I was about grown when I first saw Shoe Boots. Shoe Boots was a full-blood Cherokee Indian. He could not talk any English, and I never knew of him having any children. I don't know how old she was, but she was a middle-aged woman when I was 19 or 20 years old. I don't know how long they had been married. She grew up at Shoe Boots' house.

60 He had no negro children besides her. His English name was Shoe Boots and his Cherokee name was Ta-se-ke-ya-kah.

I don't know that he came to this country. The only reason that I believe that the applicant is the wife of Shoe Boots is that I saw them in the room together.

I never saw Shoeboots at his old house. Shoe Boots never told me that he had any children at that time. I don't know what became of Shoe Boots' wife after that time, as I have never seen her since that time. I don't know whether Shoeboots was living at that time, when the treaty of 1835 was made, or not.

## Cross-examination by the COURT :

Shoe Boots' wife was a rather tall, heavy-made woman. He had no other negroes about the place.

HENRY EIFFERT,  
*Ass't Clerk Commission.*

August 22nd, 1887.

WILLIAM SHOE BOOTS	}	Applicant for Cherokee Citizenship.
vs.		
CHEROKEE NATION.		

On part of the nation.

Mrs. MARY FLEMING, after being duly sworn, makes the following statement: I live in Delaware district, Cherokee nation. I am about sixty-seven years old. I am a Cherokee Indian by blood.

I came to this country with the emigration. I came from near Rome, Ga. I knew two women, Lizzie and Polly Shoe Boots, and knew their mother. Her name was Dollie. I knew Dollie back in the old nation. She belonged to my granny Ridge. She was my father's own aunt. Dollie's Cherokee name was Kakayah. Granny Ridge was the wife of Maj. Ridge. I went to California in 1849. Dollie then belonged to my granny Ridge. She was a slave. Lizzie and Polly were living to themselves when I went to California 1849. They were said to be the daughters of Capt. Shoeboots, and were free. The two daughters married Cherokees; their names not recollected. My recollection is that Capt. Shoe Boots free- these two girls. Granny Ridge died while I was in California. I don't know when Dollie died, but I understand that she died during the war Suoth. I knew Tom Woodard in the old nation. He sold Dollie to Granny Ridge. John, son of Dollie, was sold to a negro trader in the old nation. Tom Woodard owned one negro man of his own that was not related to the Shoe Boots' family. Dollie was a black negro. She was a tall, slender slender woman. I lived with Granny Ridge a great deal after she moved on Honey creek, after Maj. Ridge was killed. She owned Dollie during the time I was with her. I never heard of William Shoe Boots till last June. I only knew the one son that Dollie had.

## Cross-examination :

I thin- Shoeboots was an uncle of Tom Woodard. I don't know under what circumstances Tom Woodard came in possession of the Shoe Boots family. I don't know if my own personal knowledge that they were slaves or not. I suppose that Dollie was a slave, as Tom Woodard sold her as a slave to Granny Ridge. John, the son of Dollie, was not as dark as his mother.

C. C. LIPE,  
*Clerk Commission.*

September 21st, 1887.

OFFICE COMMISSION ON CITIZENSHIP,  
TAHLEQUAH, I. T., Sept. 27th, 1888.

WILLIAM SHOE BOOTS ET AL. }  
 vs. }  
 CHEROKEE NATION. }

WILLIAM SHOE BOOTS, who, after being duly sworn, on oath says:

That he is sixty-seven years old. I live in Tablequah district. I am the party that has this case on file for citizenship in the Cherokee nation. I have seven children, named Lizzie Davis *née* Shoe Boots, about thirty-two years old; Willie Shoe Boots, aged about twenty-eight years old; Rufus Shoe Boots, aged twenty-three years old; Flora Shoeboots, aged 19 years; John P. Shoe Boots, aged 17 years; Jim Shoe Boots, aged 14, and Sophie Shoe Boots, aged 13 years. The above-named persons are the children by my present wife.

Mary Swagerty is the daughter of my brother, John Shoe Boots. She has an application on file for Cherokee citizenship in the Cherokee nation and is about forty-nine years old. Her mother  
 63 was a Cherokee woman named Co-ne-wa-la. She, the applicant, was born in Georgia. Maj. Ridge raised her. Her mother was a free woman. I came to this country with John Ridge. I remember of seeing Mary Swagerty in the old nation. I saw Mary Swagerty last in Georgia when she was a little girl. I next saw her in this country about seven years ago, and I recognized her as the same little girl, Mary, who I knew back in the old nation. John Shoe Boots was said to be my father. His name in Cherokee was Tar-se-ka-ya-kah. My mother was a black woman. She had six children by Tar-se-ya-ke-yah. My brothers' and sisters' names were as follows: Lizzie Shoe Boots, John Shoe Boots, Pollie Shoe Boots, Lewis Shoe Boots, William Shoe Boots, myself. Lewis and I were twins. John was called in Cherokee Ah-ta-sa; Lizzie, Ka-yu-ka; Polly, Wa-lu; Lewis' name was Armstrong in Cherokee.

Tom Woodard was a nephew of Tar-se-ka-ya-kah. Myself and brothers and sisters were free people and were born of free woman.

## Cross-examination:

I was small when my father died, tho' I can remember him. He died at Thompson's river, on Hightower. After Tar-se-ya-kah died I stayed at Tom Woodard's, the man mentioned above. She was  
 64 grown and had two children when the people emigrated to this country. She married a Cherokee man—a full blood—who went by the name of Ferguson. She was living at Dirt-town at the time of the emigration. John Shoe Boots, my brother, was in Georgia at the time of the emigration. He was grown at the time and had a wife and child. Mary Swagerty was born in the old nation, near Rome, Ga., where her father, John Shoe Boots, lived. John Shoe Boots had an improvement of his own in the old nation. Lizzie Shoe Boots had an improvement of her own in the

old nation. Mary Swagerty was about one year old when the emigration was made.

My knowledge of Mary Swagerty was that she was the daughter of my brother John and from what she told me since in this country. Mary Swagerty is now living with Capt. Smith in Tahlequah district, Cherokee nation. My application gives my *name* as 64, and it should be 68 years old in next month. I stayed with John Ridge after my mother died. No other of my brothers or sisters stayed there with Ridge. Lewis, my brother, had been stolen and carried off. I don't know what became of him after that time. I came to this country with the Ridge family, and so did my mother, Dolly. Lizzie came here with the emigration. My mother and myself remained with John Ridge on Honey creek till his death. I was about grown when he was killed. I was apprenticed to a Mr. Winthrop, a brother-in-law of John Ridge's, to learn the carpenter's trade. Winthrop then died, and then Mrs. Winthrop sent 65 me to Van Buren to learn the blacksmith trade. Dolly, my mother, died during the war, in the Choctaw nation. I left here in 1852 for California and remained there for two years. I went then with William and Calvin Holmes. I drew no money in 1852 with the emigrant Cherokees west. Lizzie, my sister, drew money with the Cherokees in 1852 as a Cherokee Indian by blood. She was then living with a Cherokee by the name of Mortar. Lizzie had children at — time and their names were Claud, Ailsey, Sallie, and Morrison. They were residents of Delaware district. My sister Pooy also drew money in 1852. She was then living with a Cherokee by the name of Joe. She had children, two of whom were named Maria and Louisa. She also had a son named Joe.

Mary Swagerty's husband is named Edward Swagerty—a black man. My wife, the mother — my children, of whom I have been testifying, was a Downing. She was held as a slave in the days of slavery. She had no children prior to my marriage with her.

#### By COURT:

When I went to California I started from Benton county, Arkansas. I don't know that any of my sisters Lizzie's children are now living. I never made any application for any headright after I returned from California.

Attest:

CONNELL ROGERS,  
*Clk Com. on Citizenship.*

66 To his excellency D. W. Bushyhead, principal chief of Cherokee nation, and to the honorable national council of the Cherokee nation.

GENTLEMEN: Your petitioners, the undersigned, most respectfully beg leave to submit the following facts and to ask thereupon your favorable consideration and action:

That your petitioner is a Cherokee by blood; that his rights to Cherokee citizenship was denied, and to establish this he brought suit before the commission on citizenship; that in his absence from court and that while all the time he was intending to prosecute his

said case in good faith to final judgment, as required by the laws of the Cherokee nation, his said case was called for trial, and your petitioner, not being then and there ready for trial and to answer, his said suit was "defaulted" and stricken from the docket without a hearing on the merits and facts in the case.

That subsequently your petitioners endeavored to renew their said suit before the said commission on citizenship, but said commission failed to entertain further your petitioners' suit, holding

67      that a default was a final hearing and disposition of the cause; and your petitioners beg leave further to show that the testimony of most honorable and reliable witnesses, whose attendance could not be had at that time before the said commission; and, further, by a rule of practice ordained by the commission, all witnesses were required to attend in person and testify before said commission, and that by this rule a large and most important part of your petitioners' proof was rendered incompetent and was rejected by said commission, greatly to the disadvantage and damages and rights of your petitioners, and in order further to show your petitioner's cause and complaint he herewith files for your consideration :

1. The deposition of William Ellington Shoe Boots, taken before John Q. Tufts, U. S. agent.

2. His petition, filed before the commission on citizenship Sept. 9th, 1882, and which was withdrawn from the commission on Oct. 4th, 1882.

3. The deposition of William Harnage, taken before Allen Ross, clerk of Tahlequah district, C. N.

4. The deposition of Martha A. Bigby, taken by S. A. Bigby, clerk of Flint district, Cherokee nation.

68      5. Depositions of Ruth Bean, taken by W. C. Ghormley, clerk of Goingsnake district, Cherokee nation.

6. The testimony of John L. McCoy, taken in open court, before the commission, on November 11th, 1882.

Your petitioner further declares that he is a Cherokee by blood, having descended from one of the most prominent and ancient and recognized families of the Cherokee nation, as will appear by the depositions, testimony, and documents filed herewith.

But owing to accidents and causes beyond your petitioner's control he had been denied *from* a fair trial of his case before the judicial department of the Cherokee nation, and that in consequence of these facts he, his wife, and his children, all of whom join in this petition, most humbly appeal to the executive and legislative power of the nation and ask that a special act be passed for their benefit and they in this way be restored to all the rights and privileges of Cherokee citizenship; and so your petitioners shall ever pray.

WILLIAM STEPHENS.  
ANNA STEPHENS.



69 UNITED STATES OF AMERICA, }  
 Western District of Arkansas, } ss:

I, WILLIAM ELLINGTON SHOE BOOTS, after being duly sworn, say: I am the son of To-os-ki-oka Shoe Boots, a full-blood Cherokee Indian, by Clarendon Ellington (a white woman of the State of Georgia), in the year 1801 or 1802. When I was six or seven years old my father took myself, brother John and sister Kate—my father sending a negro man along by the name of Mingo—and took us to where his people lived, near Mount Sterling, Ky. I lived there til- I was twenty-one years old. My sister during the time we lived here married a man by the name of Robert Stephens, and they moved to Ohio. When I left Kentucky I went to Missouri. I stayed there ten years, and went to Illinois, within fifteen miles of Sangamon river. At this place I was married, and from there I moved to Monticello, Lewis county, Missouri. I left Missouri, I think, in the year 1838 and went to Texas. In the year 1851 I moved to the Cherokee nation, and stayed with a man by the name of Jesse Mayfield, about twenty-five miles from Tahlequah. I remained with him and his family during the whole time I was engaged in establishing my rights as a Cherokee Indian, somewhere between four and five months. Mr. Mayfield is dead, but his wife is still

70 living on the place, as I understand. I proved my right to the satisfaction of the Cherokee council and was admitted as a Cherokee Indian, and I drew what was called the "old-settler Cherokee transportation money," amounting to fifteen hundred and twenty-four dollars and twenty-four cents. I then returned to Texas, where I now live, near Waco. I know William Stephens, now living in the Creek nation, to be the son of my sister and Robert Stephens, at present living near Muscogee, Creek nation, and that he is one-fourth Cherokee Indian, he being a direct descendant of Te-is-ki-oke Shoe Boot, my father.

WILLIAM ELLINGTON SHOE BOOT.

Subscribed and sworn to before me this the twenty-fifth day of June, 1880.

JOHN T. TUFTS,  
*U. S. Indian Agent.*

Union agency, Indian Territory.

71 CHEROKEE NATION, }  
 Tahlequah District. }

Personally appeared before me, Allen Ross, clerk of the aforesaid district, William Harnage, who, after being duly sworn, states: Some time in 1871 I met with Mrs. Stephens at Elua Alberty's, and he told me that he belonged to the Shoeboot family; then I told him that I had met with a half-brother of Shoeboot in Texas some time in 1850. I went to Mr. Anderson's to get a drink of water, and he asked me if I was a Cherokee and a brother of John Harnage, and I told him that I was a Cherokee; then he told me that he had two half-brothers and a sister who were Cherokees. I asked him

who was the father of the children, and he said that he did not know, but his mother always told him that he was an Indian by the name of Shoeboot. He said that his father was named Anderson, and that the father of the other children was named Shoeboots, but the children took the name of Arlington, that of their mother. I asked Anderson if he knew where any of his brothers and sisters were; he said one of them was out West. I told him that he would be entitled to the old-settler money if he would come to the nation and establish his rights. I saw him here and understood that he had established his rights and drawn his money. I saw the  
 72 uncle of the applicant here in 1880, and I recollect him to be the same man that drew his money at the old-settler payment in 1850. States that he has always understood that Shoe Boot had three children by a white woman in the States, and Shoe Boots was a full-blood Cherokee Indian.

W. HARNAGE,

*Associate Judge of the Court of Commission.*

Sworn to and subscribed to before me this the 15th day of September, 1881.

ALLEN ROSS,

*Clerk T. D., C. N.*

CHEROKEE NATION, {  
*Flint District.* }

Personally comes this day before me, clerk of the above-named district, Mrs. N. A. Bigby, who, being duly sworn according to law, deposes and says: I am a resident of Flint district; am a Cherokee by blood; was born in the old nation. I was residing near my present place of residence in the years of 1851-'2, and have resided here ever since, with the exception of a short time during the war. I remember the old-settler payment which took place in 1851. I remember an old gentleman that stayed at our home; his name was Allington or Shoe Boot, and came from Texas here and  
 73 -rew old-settler — for himself and family at the payment of the old settler-. Deponent further states that she has just been visited by the old gentleman, who claimed to be the same one that visited us in 1852, and after a conversation with him I find that from incidents and from circumstances that occurred here at that time that he is the same Allington or Shoe Boot that drew his old-settler money. I also find that his name, with the date of his birth, was recorded in a book by Mr. Mayfield, my first husband, and that I have the book in my possession, and that he was born on the 17th day of October, 1804, and from my knowledge of him I have no hesitancy in saying that he is a Cherokee Indian by blood, and know that he participated in the payment to the old-settler payment as a Cherokee.

MARGARET A. BIGBY.



Subscribed and sworn to before me this the 22nd day of July, 1880.

[SEAL.]

S. A. BIGBY,  
*Clerk of Flint District, C. N.*

74      CHEROKEE NATION,      }  
              *Goingsnake District.* }

This day personally appeared before W. C. Ghormley, clerk of Goingsnake district, Ruth Bean, to me personally known, and, being first duly sworn, deposes and makes the following statement: I am in my eighty-second year and am a Cherokee Indian; was born in the old Cherokee nation, east; am a daughter of Clip Starr, and my husband was John Bean, and he emigrated from the old nation in prior to the treaty of 1835-'6. I was acquainted with a Cherokee Indian by the name of Shoeboots. I saw him at my father's house in the old nation. He came to get my father to write a letter to his wife's people, asking them to bring his wife and children back home to the nation—his wife was a white woman—and that her father had carried her and her children back to the States with a promise to bring them back to the nation, and a failure on their part is the reason that he wanted to write as above stated, and I have been acquainted with one William Stephens about five years, who claims to be a grandson of Shoeboots, and from my acquaintance with him, and from what he says in regard to Shoe Boots' family, and from the strong resemblance he bears old Captain Shoe Boots, I am satisfied that — is just what he claims himself to be, the grandson of the above-named Shoe Boots.

75

(Signed)

<sup>her</sup>  
RUTH x BEAN.  
mark.

Sworn to and subscribed before me this the 21st day of September, 1881.

W. C. GHORMLEY,  
*Clerk Goingsnake District, Cherokee Nation.*

COMMISSIONERS' COURT, September 11th, 1882.

*Testimony of J. L. McCoy.*

I came from home to Tahlequah I don't know how long ago. When I came I met up with a man by the name of William Stephens. He asked me what my name was, and I told him McCoy. He asked me if my name was Alex. McCoy, and I told him that it was not, but Alex. was my father. Stephens said that he had heard his mother speak often of Arch. McCoy. I asked him who his mother was, and he called her name and said she was a daughter of Shoe Boots. He asked me if I knew Shoe Bo-ts, and I told him that I did, back in the old nation. I remembered him well. I used to see him at the council, as my father lived at the council grounds of the nation. I remember a lady well who claimed to be Cherokee; a gentleman was with her. They stopped at our

76

house for the purpose of staying over night. I remember that she said that she was from Kentucky, telling my father this, and that she had learned that her father, Shoe Boots, was dead, and her business was to get at her father's estate, as Shoe Boots was tolerably wealthy and owned slaves. I remember that she asked father to give her advice as to how to get at this estate, and he gave her advice as best he could, and recommended her to go to the chief, John Ross, and establish her Cherokee blood, the daughter of Shoe Boots. I remember that I heard that she went to the chief, Ross, and he must have given her advice as to what to do to get what she wanted. She visited several of the prominent men of the tribe. I understood that such men advised her in the business for which she was there. I very well remember of hearing my father say that he advised her as best he could as what to do. It must have all proved well, to-, as was my understanding. At her first call at my father's house she stopped several days in order to rest, after which she proceeded on to her business and returned back to Kentucky. She stopped at father's on her way back.

77 When I met Stephens here at this place he asked me if I would know his mother, the daughter of Shoe Boots, and my answer was that I thought that I would know her. I think that I would remember her features and countenance, and would know her, as she had features much like her father. The reason for this was that Shoe Boots was a very peculiar man, from the fact that he was a very tall man and wore the garb of a military man. He wore boots the top of which reached above his knees. His hat was that of a British military hat, with a red plume in front, which stuck straight up. His coat was a British uniform coat, which was kipped with red scarlet cloth. Next is that he wore a strap across his shoulders, and on that strap swung a long sword. This was his style when he would come to council. He was of a very dark complexion; he was a full-blood Cherokee; and this woman that Stephens showed me and introduced to me and said that she was his mother, and Stephens asked me if I knew her, and I said that I did, as she was the very model of her father, and the same woman that I saw at my father's house in the old nation. I think it was about 1828 or '27 when I saw her at my father's house, when she was on her way to make a settlement of her father's estate from Kentucky.

78 *Question- from Taylor on Part of the Defense.*

Q. Do you know her given name?

A. No.

By the COURT:

Q. When you saw Mr. Stephens, was that the first time you ever saw him?

A. Yes.

By the COURT:

Q. When Stephens asked you if you would know his mother if you would see her, was she there and did you see her?

A. I did directly; she was at Jesse Wolfe's.

By the SOLICITOR:

Q. When she stopped at your father's, did she have a child?

A. No; she was yet unmarried.

By the COURT:

Q. How came this woman in Kentucky?

A. Her mother took her there, who had separated from Shoe Boots.

By the SOL.:

Q. How long was this after the Creek war?

A. I don't know.

By the COURT:

Q. When you saw this woman at your place, how old was you?

A. About sixteen years old.

By SOL.:

Q. When you saw this woman at Jesse Wolfe's, did you ask her who her father was?

A. I don't recollect that I did.

79 Q. How did you know this woman?

A. I have already stated the facts or reason that I knew her is that she resembled the father, and her features resembled those of her father very much.

By SOL.:

Q. Have you ever asked Shoeboot if this was his daughter or not?

A. No.

By TAYLOR:

Q. When Stephens introduced you to this woman did she tell you that Stephens was her son?

A. After I asked her she said that he was.

By the COURT:

Q. Did this woman tell you her business when she came to Tahlequah?

A. Her son told me.

Q. Did he state with whom he had business?

A. He said his business was to establish their rights in the Cherokee nation.

Q. Did he make application at that time?

A. I don't know, but he had me examined before Keys, the court of evidence.

JOHN L. McCOY.

I certify that the foregoing six pages is the testimony of John L. McCoy in the case of William and Anna Stephens vs. Cherokee nation.

80

Copy.

Page 114, Old Settlers' Pay-roll of 1851.

*Non-residents.*

No. of fam.	Heads of families and children.	No. of Ind.	Amount due each.	Amount of stop pages p'd claims.	Amount paid Indians.	Total am't re- ceived for.	Signatures.
1	William Shoe Boots. Isaac       "       " James       "       " Martha       "       " Rebecca       "       " Abraham       "       "	6	270.95  Total, 1,625.70	129.00	1,496.70	1,625.70	William Shoe Boots.  Witness : S. M. Millard.

Copy from Page 262, Emigrants' Pay-roll, 1852.

Heads of families & children.						
Lizzy Boot. Ail-se. Sally. Lotty. Morrison. Dch-se-gah-yah-ge.	6	556 98	22 68	556 98	Lizzy x Boot.	S. M. Wilard.
Polly Boot. Meriah. Eliza Hammer. Louisa. Lizzy. Mary.	6	556 98	22 68	556 98	Polly x Boot.	S. M. Wilard.

81

# EXECUTIVE DEPARTMENT OF CHEROKEE NATION.

I, John L. Adair, executive secretary of the Cherokee nation, do hereby certify that I have compared the foregoing with the original record in this department, and that the same are correct transcripts and copies therefrom.

In witness whereof I have hereunto set my hand and affixed the great seal of said Cherokee nation, at Tahlequah, this the 9th day of Sept., 1896.

[SEAL.]

JOHN L. ADAIR,  
*Executive Secretary.*

In the matter of application of William Stephens, personally appeared before me Wm. T. Hutchings and made oath that he had carefully and diligently searched the emigrant pay-roll of 1852, and that the name of Wm. Ellington Shoe Boot does not appear on the same. There is no name on the roll approaching it, the name of Shoe Boot nowhere appearing on it; that on page 262 there appears, at numbers 1041 & 1042, the names of Lizzie & Polly Boots, who drew as heads of families, but there is no evidence to show that they were related to or that it was the same name as Shoe Boot.

WILLIAM T. HUTCHINGS.

Subscribed and sworn to before me this the 9 day of Sept., 1896.

[SEAL.]

D. J. BALL,  
Notary Public.

82 UNITED STATES OF AMERICA, }  
Indian Territory, Northern District, } ss :

*Affidavit of Allen Gilbert.*

ALLEN GILBERT, of lawful age, after being duly sworn, states as follows: My name is Allen Gilbert; my age is sixty-three years; I was born in Clark county, Ohio, in Pleasant township, Vienna post-office.

When I was a boy in Ohio I was acquainted with Robert Stevens, the tanner, the father of William Stevens, who is now an applicant, together with his family, for citizenship in the Cherokee nation.

The said Robert Stevens, the father of the said William Stevens, was a white man and was so considered by all the people in that community in which he lived.

The said Robert Stevens and his family were not known or recognized as Indians in that community.

When I was a boy in my teens the said Robert Stevens, together with his family, moved from Ohio to Illinois.

In 1864 I moved from Ohio to Lynn county, Kas. For about ten years before I moved from Ohio I ran a blacksmith shop about 2 miles from where William Stevens, the applicant herein named, was born, and about one mile from where Robert Stevens, the father of the said William Stevens, was living when he moved to the

83 State of Illinois.

In 1867 I moved from Lynn county, Kansas, to the Cherokee nation, Indian Territory, and have resided continuously in the Cherokee nation since that date, except temporarily at Coffeyville, Kansas, to educate my children.

In March, 1870, I was in Chetopa, Kansas, and met the said William Stevens, the applicant herein named, and had a conversation with him, in which conversation he said that he had been in the nation a few weeks. He told me that he owned a little place, and said he thought he could prove up his rights as a Cherokee citizen.

I afterwards met the said William Stevens at the Muscogee fair, and again had a conversation with the said William Stevens, in which conversation he renewed our acquaintance and talked over

old localities where he had lived and about the said Stevens being the son of Bob Stevens, the tanner, who lived on William Foreman Senior's farm and ran the tan yard of William Foreman for a number of years.

The said William Stevens, after this conversation, moved down into the Creek nation, and lived about one mile south of Muscogee. We exchanged visits back and forth, he staying with me often during the time we lived down there. The said William Stevens, after he

84 moved down there, told me that he had filed his claim in the Cherokee nation for citizenship, and said that he had to go to Texas to see his uncle about his proof. His uncle's name was William Ellington Shoe Boots. I afterwards saw his uncle, William Ellington Shoe Boots, at the said William Stevens' house, one mile south of Muscogee, in the Creek nation, and had a conversation with him, in which conversation he stated that he reckoned that the said William Stevens was his nephew, but that he had not seen his sister since they were young folks.

I have been back to Ohio several times since the said William Stevens told me that he had filed his claim for citizenship in the Cherokee nation, and have talked with my father and Thomas Goodfellow and others in regard to Stevens' family being Cherokee Indians, and when I first mentioned it to them it was a surprise to them, and they laughed and shook their heads and said there was something there, but that it was not Indian; their hair was too kinky; that Bob Stevens' wife, the mother of William Stevens, who is an applicant for citizenship in the Cherokee nation, was part black or darkey.

Witness my hand and seal this the 9th day of September, A. D. 1896.

ALLEN GILBERT.

Sworn and subscribed to before me this the 9th day of September, A. D. 1896.

[SEAL.]

D. J. BALL,  
*Notary Public.*

My commission expires —.

(Endorsed as follows:) Filed Jan. 29th, 1897. Jas. A. Winston, clerk.

85 *Deposition of Appellee in Rebuttal.*

STATE OF KANSAS, }  
County of Montgomery, } ss:

On this the 20th day of October, A. D. 1896, personally appeared before me, T. C. Harbourt, a notary public within and for the county and State aforesaid, WILLIAM STEPHENS, who, being by me first duly sworn, deposes and says: I reside eight miles west of Coffeyville, in the Cherokee nation, Indian Territory. I, together with my daughter, Mattie J. Ayers, and her children, Stephen Grant Ayers, Jacob Sherman Ayers, and Mattie Ayers, have filed our petition for



citizenship before the United States commission for the five civilized tribes, at Vinita, where our claims are now pending. In addition to the facts not clearly stated in our said peti-on for citizenship, I state that my grandfather, Shoe Boots, whose Indian name was Te-as-ki-yarga, was a full-blood Cherokee Indian; that my grandmother was a full-blooded white woman, and that my father, Robert Stephens, was a full-blooded white man; that my mother was a half-breed Cherokee and half white by blood; that I am informed and believe that the Cherokee nation has filed an answer to my petition and that of my daughter and grandchildren, and filed an affidavit therewith, made by one Allen Gilbert, of Coffeyville, Kansas, a white man, setting up that I am of African descent. I

86 never saw the said Allen Gilbert or knew him until 18 years ago, when I met him for the first time in the Cherokee nation, and my mother never saw nor was acquainted with him at any time; Gilbert and I had some difference concerning a claim in the Cherokee nation, since which time Gilbert has been my inveterate enemy. I never, until the charge was made by Gilbert, heard that I or any member of my family, lineally or collaterally, directly or remotely, possessed African blood.

WILLIAM STEPHENS.

I certify that the within and foregoing affidavit was read in the presence and hearing of the within and foregoing named William Stephens, and that he signed the same in my presence after having fully understood the contents thereof, and I further certify that he is personally well known to me as a reputable person and worthy of belief, and that after having been duly sworn the truth to speak in relation to the matters *above* which he has deposed he subscribed the within and foregoing affidavit; and I hereby so certify.

This the day and date above written.

T. C. HARBOUR,  
*Notary Public.*

Com. exp's Sept. 8th, 1899.

[SEAL.]

87 Also personally appeared before me Adam Beatty, a farmer; F. Guessner, a merchant for about three years; W. R. Stubblefield, a farmer, all residents of the city of Coffeyville, State of Kansas, and, after having severally been sworn, say:

That they have known the above affiant, William Stephens, for 12 years past; that he is a reputable citizen and a credible person and has always been reputed, since we have known him, as an Indian, as his appearance indicates; and, from their knowledge of him, they believe the statements made by him in the foregoing affidavit are true.

ADAM BEATTY.  
F. GUESSNER.  
W. R. STUBBLEFIELD.

Sworn and subscribed to before me this the 20th day of October,  
A. D. 1896.

T. C. HARBOURT,  
*Notary Public.*

[SEAL.]

Com. exp's Sept. 8th, 1899.

This was all the evidence adduced in this case.

88 The special master herein, on the 26th day of June, 1897,  
filed in this court the following report:

In the United States Court, Northern District, Indian Territory.

WILLIAM STEPHENS ET AL.	} # 213. Report of Special Master.
vs.	
CHEROKEE NATION.	

The above case having been referred to me as special master with instructions to report to your honor my findings of fact, and also the contention of the parties as to the law governing this case, I respectfully state that I have carefully examined the pleadings and all the evidence appellants and the appellee submitted, and, as this is a case of considerable importance, I will quote briefly from each witness.

Appellant William Stephens was born in the State of Ohio and came to the Cherokee nation on the invitation issued by Lewis Downing to all foreign Cherokees to return to their people and become citizens of the nation. He filed application for citizenship before the Cherokee authorities in 1873, and has resided in the Cherokee nation since said time. His application to be readmitted as a citizen of the nation was rejected by the Cherokee authorities on the technical ground that he was not a lineal descendant of an enrolled Cherokee citizen under act of December 8th, 1886. Appellants filed their petition before the Dawes commission on the 9th day of August, 1896, claiming to be Cherokee Indians by blood and lineal descendants of Shoe Boots, whose Indian name was Te-as-ki-yarga, a full-blood Cherokee Indian. Thereafter, on Oct. 7th, 1896, the Cherokee nation filed its answer alleging that the appellants have no ancestors who were ever citizens of the Cherokee nation since the removal of the Cherokees west of the Mississippi river, and that the mother of the appellant William Stephens was of negro blood. The application of appellants was rejected by the Dawes commission, and on January 16, 1897, they filed in this court their petition for an appeal for the decision of the said Dawes commission.

JOHN L. MCCOY testified for applicants as follows:

He knew the mother of William Stephens in 1827, in the old Cherokee nation, east of the Mississippi river; knew she was the acknowledged daughter of Shoe Boots, a full-blooded Cherokee Indian, whom he had frequently met at the national council; first

saw her at his father's house, who lived at the capital of the Cherokee nation. She came there from Kentucky to settle her  
 90 father's estate and receive her distributive share. The next time he saw her was at Tablequah, in 1874 or in 1875. Her son, William Stephens, was with her.

McCoy again testified before the Tehee court in 1882 as follows:  
 The first time he saw the children of William Stephens was at Tablequah; has no personal knowledge that William Stephens is the son of Mrs. Stephens, except what Mr. Stephens told him; think- Mrs. Stephens' name was Annie. When he saw Mrs. Stephens at Tablequah would suppose she was 70 or 75 years of age from her appearance. His information is that the mother of Mrs. Stephens was a white woman; was well acquainted with William Stephens, and if he is a son of Mrs. Annie Stephens, then he is a grandson of Shoe Boots. Witness is seventy-five years old and a resident and citizen of the Cherokee nation.

McCoy again testified before James Brizzolara in 1891 as follows:  
 That he is seventy-seven years of age, a Cherokee by blood, and a recognized citizen; has known William Stephens for nineteen years; knew the mother of William Stephens. She was a half-breed or a half-blood Cherokee Indian; knew her in old  
 91 Cherokee nation; met her there more than sixty years ago. She was recognized as a half-blood Cherokee Indian. He knew the mother and also the maternal grandmother of William Stephens. The grandfather of William Stephens — a full-blood Cherokee Indian and called Capt. Shoe Boots—Ootohseyahkee. He had often seen Capt. Shoe Boots, and he testified to facts within his own knowledge. The mother of William Stephens was the daughter of Capt. Shoe Boots, begotten in lawful wedlock.

WILLIAM ALLINGTON SHOE BOOTS testified as follows: Resides in Texas; is a Cherokee Indian by blood. His father was Shoe Boots; his Indian name was Te-as-ki-yarga. His mother's name was Clarinda Ellington, a white woman, who was born in Georgia. Went from Georgia to Kentucky with his mother and sister, his sister being the mother of William Stephens. His father sent them with a negro and some ponies to see his mother's family. I lived in Kentucky with claimant's mother, and his mother went from there to Ohio to live. William Stephens was the son of Robert Stephens, a white man. William Stephens' mother was my sister and Shoe Boots, Te-as-ki-yarga, was her father, and he was a full-blood Cherokee. Witness never went back to Georgia from Kentucky. Had one brother and sister. From Kentucky he went to  
 92 Illinois, married there, and then went to Texas; lived in the Cherokee nation a while, in Flint district, and have been here four or five times; came here and drew old-settlers' money in 1852. Stephens' mother is dead; died near Chetopah. It was understood that my father was a full-blood Cherokee. Recollect seeing his father, but was so little didn't remember much about

him; must have been two or three years old when his mother and himself went from Georgia to Kentucky; never saw his father after he left him in Georgia and went to Kentucky.

JOHN HARNED testified: 70 years of age; reside in Kilgore, Texas; have met appellant William Stephens; was acquainted with William Ellington; proved himself to be a Cherokee. In 1851 he drew annuity in the Cherokee government. His name should appear upon the roll of 1851. Have no knowledge of William Stephens being a relative of Shoe Boots. William Ellington, who is a son of Shoeboots, takes the maiden name of his mother, Ellington.

The evidence in his case shows his mother was a white woman.

The Cherokee commission, to whom was referred the case of William Stephens, made report to Hon. Joel B. Mayes, chief — Cherokee nation, and stated they found William Stephens to be a Cherokee Indian by blood; that he is a grandson of Te-as-ki-yarga and a nephew of William Ellington Shoeboots, but report conversely to his claim, on the ground that the evidence did not show him to be a lineal descendant of a Cherokee ancestor whose name appears upon the roll of the Cherokee citizens mentioned in seventh section of the act of December the eighth, 1886.

Acting under this report, he, said Joel B. Mayes, chief, sent a special message to the Cherokee council, in which he states that the reason for rejecting the claim of William Stephens was merely a technical one, his right to citizenship by blood being admitted by the commission. He concludes his message with the following statement: "No doubt his claim is a just one."

By agreement of counsel for appellant and the nation, all evidence taken before the Dawes commission, and all the affidavits, depositions, documentary papers, and sworn statements of persons filed with and attached to the typewritten argument of counsel for appellants in this cause, shall be read and considered in evidence by the master, subject to exceptions for incompetency and irrelevancy, and that the following certificate be admitted in evidence:

" UNION AGENCY, MUSCOGEE,  
INDIAN TERRITORY, *March 22nd, 1897.*

94 I, Dew M. Wisdom, United States Indian agent, certify that the names of, No. 112, William Shoe Boots; 113, James Shoe Boots; 114, Martha Shoeboots; 115, Isaac Shoe Boots; 116, Rebecca Shoe Boots; 117, Abraham Shoe Boots, appear on the Cherokee old-settler pay-roll as unclaimed shares, and that these names appear on the old-settler pay-roll of 1851.

(Signed)

DEW M. WISDOM,  
*U.S. Indian Agent."*

And also it is further agreed that all the affidavits, depositions, and documentary papers offered by the appellee in evidence in this case before the Dawes commission may be read and considered as evidence in this case, subject to objection for incompetency or irrelevancy.

The Cherokee nation submits the following evidence: JOHN COCHRAN testifies: When he first saw Capt. Shoe Boots and his negro wife they came to my grandmother's house, where my grandfather stayed, and when we went to the table to eat, the question was asked Shoe Boots if he had the woman for a slave, and he answered that he had her for his wife. After he had answered this question he was directed to another house for them to occupy, and they stayed there about two years. At that place was born a child 95 to Shoe Boots; it was a girl. In a few days he named it Kihuga. I do not recollect when Shoe Boots died. He never came to this country, but his wife came and lived on Honey creek, in Delaware district; was acquainted with one Tah-ha-ya-ha; was acquainted with Kihuga, the sister of applicant; was not acquainted with the younger ones. I am eighty-six years old; lived in the old nation, about fifty yards from Shoeboots. Kihuga was the first child of Shoe Boots and his negro wife. The twins were both boys. Applicant was about eight or nine years old when I saw him in Red Clay. I saw the applicant about three years ago on Honey creek, after he came West. The mother of applicant was living at that place and I only saw two children at that time. I think Captain Shoeboots and others came three or four years before I saw them at Honey creek. This boy that I saw at Honey creek with his mother was named William Shoe Boots. Captain Shoe Boots was of the Cherokee Indian tribe. Shoe Boots was my mother's uncle. He was of the Wolfe clan and could not talk any English; don't know anything of applicant's family; don't know when his mother died. Shoe Boots did not have any more negroes except his wife. She was rather tall and slender made.

96 EDMUND ROSS testified that he is a Cherokee Indian by adoption, 70 years old, and lived in Tahlequah; knew Capt. Shoe Boots back in the old nation, when he lived with Maj. Ridge; did not know his mother and father; knew John Shoe Boots. He was stolen out of the nation. They were free born. The first time I saw William Shoe Boots after that time was three or four years ago, and I recognized him to be the same William Shoe Boots that I knew in the old nation. It has always been my understanding that the applicant, William Stephens, had Cherokee blood.

NATHANIEL FISH testified for the nation as follows: Was acquainted with old Capt. Shoeboots. At the time he last saw Capt. Shoe Boots he had with him a wife wearing ornaments like those generally worn by Cherokees, such as earrings. She was a coal-black negro. Capt. Shoe Boots was about witness's complexion. What caused me to know that it was his wife and that she was a negro, when we were eating at the table he and his wife sat on the same side. I sat on the other side of the table, and when they were through eating they got up and went out to another house, where they usually stayed. From the statement I make here is 97 from what I know and saw that makes me believe he is a descendant of Shoe Boots. When I saw them they had no children. I cannot state that they had any children.

## Cross-examination :

Knew Capt. Shoe Boots in the old nation at Lolola ; lived about a day's journey from Shoe Boots ; was well acquainted with Shoe Boots ; would suppose he was sixty years old when witness first saw him ; was about four years after the Creek war when he saw him and supposed it was in the year 1814. Witness is eighty-eight or eighty-nine years old. Shoe-Boots was a full-blood Cherokee Indian ; could not talk any English. I never knew of his having any children. I do not know how old she was, but was a middle-aged woman when I was nineteen or twenty years old ; do not know how long they had been married. She grew up at Shoe-Boots' house. He had no negro children besides her. His English name was Shoe Boots and his Cherokee name was Tasekeyarga.

MARY FLEMING testified for the nation : 67 years old ; Cherokee by blood ; came to this country with the emigration from near Rome, Ga. ; knew two women, Lizzie and Polly Shoeboots. I knew their mother, and her name was Dolly ; knew Dolly back in the old nation. She belonged to my granny Ridge. Dollie's Cherokee name was Hakaya. She was a slave and belonged to my granny

98 Ridge. Lizzie and Polly were living to themselves when I went to California, in 1849. They were said to be the daughters of Captain Shoe Boots and were free. The two daughters married Cherokees. My recollection is that Capt. Shoe Boots freed these two girls. I never heard of William Shoe Boots until last June. I only knew one son that Dolly had.

WILLIAM SHOE BOOTS testified : 67 years old ; live in Tahlequah district ; one of the parties that has a case on file for citizenship in the Cherokee nation ; have seven children ; John Shoe Boots said to be my brother ; his name in Cherokee was Tarsekayakah. My mother was a black woman ; she had six children. My father died at Thompson's river, on Hightower.

Mrs. N. A. BIGBY testified : She is a resident of Flint district and a Cherokee Indian ; born in the old nation ; was living near my present place of residence in 1851 and 1852, and have lived here ever since ; remember the old-settler payment in 1851 ; remember an old man who stayed at our house by the name of Ellington or Shoeboots. He came here from Texas and drew the old-settler money for himself and family.

RUTH BEAM testified : 82 years old ; Cherokee Indian by blood ; daughter of Cliff Starr ; husband was John Beam, who emigrated from the old nation prior to the treaty of 1835-'6 ; was acquainted with a Cherokee Indian by the name of Shoeboots ; saw him at my father's residence in the old nation. He came to get my father to write a letter to his wife's people, asking them to bring his  
99 wife and children back home to the nation. His wife was a white woman, and that her father had carried her and her children back to the States, with a promise to bring them back to



the nation, and a failure on their part is the reason that he wanted to write as above stated; have been acquainted with William Stephens for five years, and my acquaintance with him and from what he says in regard to the Shoeboots family I am satisfied that he is the grandson of Capt. Shoeboots.

Page 114, Old Settlers' Pay-roll of 1851.

*Non-residents.*

No. of fam.	Heads of families and children.	No. of Ind.	Amount due each.	Amount of stoppages p'd claims.	Am't p'd Ind.	Total am't re- c't'd for.	Signatures.
1	William Shoe Boots. Isaac       "       " James       "       " Martha       "       " Rebecca       "       " Abraham       "       "	6	270.95  Total, 1,625.70	129.00	1,496.70	1,625.70	William Shoeboots.     Witness: S. M. Millard.

ALLEN GILBERT testified for the nation: He was acquainted with Robert Stephens in Ohio, the father of William Stephens. Robert Stephens was a white man, and he and his family were not known or recognized as Indians in that country. When I was a boy the said Robert Stephens, together with his family, moves from Ohio to Illinois. In 1864 he moved from Ohio to Kansas. For about ten years before he moved from Ohio he run a blacksmith shop about two miles from where William Stephens, the applicant, was born. In 1867 witness moved from Lynn county, Kansas, to the Cherokee nation, Indian Territory, and had resided in the Cherokee nation since that date. In March, 1870, he was in Chetopah, Kansas, and met William Stephens, and afterwards met the said Stephens at the Muscogee fair and again had a conversation with the said Stephens. The said William Stephens afterward moved down to the Creek nation and lived near Muscogee, and after he moved here he told me that he had filed his claim for citizenship in the Cherokee nation and was going to Texas to see his uncle about his proof. His uncle's name was William Ellington Shoeboots. I afterwards saw his uncle at Stephens' house and had a conversation with him, in which he stated that he reckoned William Stephens was his nephew, but that he had not seen his sister since they were young; have been back to Ohio since Stephens filed his application and have talked with my father and Thomas Googfellow and others in regard to Stephens' family being Cherokee Indians, and when I first mentioned it to them they were surprised, and laughed at the idea and said that there was something there, but that it was not Indian; that their hair was too kinky; that Bob Stephens' wife, the mother of William Stephens, was part black or darkey.

In rebuttal — the evidence offered by the Cherokee nation WILLIAM STEPHENS, the applicant, testified : He resides west of Coffeyville, in the Cherokee nation. He, together with his daughter, Mattie J. Ayers, and her children, Stephen Grant Ayers, Jacob Sherman Ayers, and Mattie Ayers, have filed their petition for citizenship before the Dawes commission. In addition to the facts not clearly stated in the petition for citizenship states that his grandfather, Shoe Boots, whose Indian name was Teaskiyarga, was a full-blood Cherokee Indian ; that his grandmother was a full-blooded white woman, and that his father, Robert Stephens, was a full-blood white man ; that his mother was a half-breed Cherokee and a half white by blood ; that he was informed that Allen Gilbert, a white man, made an affidavit that he was of African descent. Witness testified that he never saw Allen Gilbert or knew him until eighteen years ago, when he first met him in the Cherokee nation, and that his mother never saw nor was acquainted with him at any time ; that he and Gilbert had some difference concerning a claim in the Cherokee nation, since which time Gilbert had been his inveterate enemy ; that he never until the charges made by Gilbert heard that  
 102 he or any members of his family, lineally or collaterally, directly or remotely, possessed African blood.

ABEL SHOE BOOTS testified : Live in Cooweescoowee district of the Cherokee nation, and is a son of William Shoe Boots, who was a half-breed Cherokee. His father's mother was a white woman. His father's name and that of five of his children are on the old settlers' roll of 1851. My father was the uncle of the applicant Stephens and always recognized the relationship existing between them.

C. C. AYERS testified that he married the petitioner Mattie J. Ayers, who was the daughter of William Stephens. He has seen the mother of William Stephens, who lived with Stephens at the time of his marriage. She had every appearance of being a half-blood Cherokee ; has known Allen Gilbert for fifteen or twenty years. A year ago Gilbert was at Tahlequah, and he and Gilbert talked over the Stephens case, and Gilbert volunteered to assist him in the matter of citizenship, and said there was no doubt of the genuineness of the Stephens claim.

Since that time Stephens and Gilbert had a difference over the land matter.

Captain WILLIAM JACKSON testified that he knows Rothchild, the cattle-buyer. Stephens and Rothchild got into a quarrel about some cattle, and Rothchild called Stephens "a d—d old nigger."

He met Stephens' mother also at Tahlequah, and she told  
 103 him her maiden name was Ellington, and that she had a brother William Ellington Shoe Boots. She did not look like she had any colored blood in her. He also saw William Ellington Stephens, who told him that Mr. Stephens was his sister.

R. F. WYLIE testified he was attorney for the nation before the citizenship commission in 1888, when the Stephens case was before the commission. The proof showed that Captain Shoe Boots, the alleged grandfather of William Stephens, had two wives at different times. His first wife was a white woman, and by this woman he thinks the proof shows he had four children. One of the boys was named William Ellington Shoe Boots. The proof before said commission showed that the mother of William Stephens was a full sister of this William Ellington Shoe Boots, whose name appears on the old-settler roll of 1851. After the first wife of Shoe Boots went back to Kentucky, he took a nigger woman for his wife. He does not recollect how many children she had; perhaps three or four. It appeared that old Capt. Shoe-Boots had two families, one by a white woman and another by a negro woman. The commission was convinced that the mother of William Stephens was a full sister of William Ellington Shoe Boots.

104      Reviewing all of the above evidence, I am forced to the conclusion that the old Capt. Shoe Boots, Teaskiyarga, was a full-blood Cherokee Indian; that he married a full-blood white woman by the name of Clarinda Ellington, and there were born to them three children as the issue of the said marriage, two sons and one daughter, one of his sons being William Ellington Shoeboots, who afterwards adopted his mother's maiden name, William Ellington. One of the witnesses thinks the daughter's name was Annie, but others say her name was Sarah. The other son was named John Shoe Boots. The daughter Sarah or Annie was the mother of the appellant William Stephens, and was a half-blood Cherokee Indian.

I find from the sworn petition that it is the history of the Shoe Boots family that Captain Shoe Boots, Teaskiyarga, captured his wife in Kentucky and carried her to Georgia, and she was a white girl named Clarinda Ellington, and, as above stated, there were born to them three children. The relatives of Clarinda Ellington, upon learning of her whereabouts, went to old Shoe Boots, and, upon a promise to return them, prevailed upon him to permit his wife, Clarinda, and her children to visit her relatives and the home of her childhood in Kentucky. They never returned to their

105      husband and father. Sarah afterwards moved to the State of Ohio and married Robert Stephens, a white man, and there was born to them this applicant, William Stephens. William Stephens came to this country over a quarter of a century ago, where he has continuously resided in the Cherokee nation. He came here under an invitation issued by Chief Downing for all non-resident Cherokees to come to the Cherokee nation and make it their home. Soon after he came he made application for his mother and for himself to be readmitted as citizens of the nation. The commission who heard this case was convinced of the genuineness of his claim to Cherokee blood, and so reported to the chief, but rejected his application upon a technical ground. Upon this report Chief Mayes, on a message to the general council, stated his confidence in

the honesty and genuineness of the claim of the applicant and wanted the council to pass an act recognizing applicant as a full citizen, but somehow this was never done.

I find, as above stated, that William Stephens came here over twenty-five years ago, and has in good faith sought to become a citizen of the Cherokee nation, relying solely upon the justness of his cause and his unquestioned Cherokee blood to readmit  
106 him as a citizen. He has improved considerable property in the Cherokee nation, and has continuously lived here as a Cherokee citizen, and at one time was permitted to vote in the Cherokee elections.

The Cherokee nation does not deny the fact that the appellant William Stephens has Cherokee blood, but contends that the mother of the said Stephens was of African or negro blood, and by reason of this fact should not be admitted to citizenship.

I do not think it necessary to comment upon this as a legal question in the case, but I am convinced from a great preponderance of the evidence that the mother of Stephens had not a drop of negro blood in her veins; but, to the contrary, she was one-half white and one-half Cherokee, as claimed by the appellant Stephens, thus making Stephens a quarter Cherokee Indian and three-quarters white.

I find that Mrs. Mattie J. Ayers is a daughter of William Stephens, thus making her one-eighth Cherokee Indian and seven-eighths white, and there was born to the said Mattie J. Ayers in lawful wedlock the following living children: Stephen Grant Ayers, Jacob Sherman Ayers, and Mattie Ayers.

I therefore conclude that William Stephens and his  
107 daughter, Mattie J. Ayers, and her children, Stephen Grant Ayers, Jacob Sherman Ayers, and Mattie Ayers, are all Cherokee Indians by blood and untainted with any negro or African blood.

Your honor can see from this report that it has been a long and tedious job, and I respectfully ask you to allow me a reasonable master's fee.

Respectfully submitted.

R. P. DE GRAFFENRIED,  
*Special Master.*

(Endorsed as follows:) Filed June 26th, 1897. Jas. A. Winston, clerk.

108 (DEC. 16, 1897.)

WILLIAM STEPHENS, MATTIE J. AYERS, JACOB SHERMAN	} # 213.
Ayers, Mattie Ayers, Appellants,	
<i>vs.</i>	
THE CHEROKEE NATION, Appellee.	

Come the above-named appellants, William Stephens, Mattie J. Ayers, Jacob Sherman Ayers, and Mattie Ayers, by Grace & Forrester, Esqs., their solicitors, and come the appellee, by its attorney,

W. T. Hutchings, Esq., its solicitor, and this cause having been heretofore submitted to the court upon application for citizenship for said appellants and answer and demurrer of the appellee and the depositions and documentary evidence for both parties on file in the case and the master's report, and the court, now being well and sufficiently advised in the premises, doth find the issues for the appellee, The Cherokee Nation.

It is therefore by the court considered, ordered, adjudged, and decreed that the said above-named appellants, applicants for citizenship in the Cherokee nation, be, and they and each of them are hereby, refused admission and enrollment as citizens of said nation, and the judgment and decision of said United States commission is in all things approved and affirmed, and the application for citizenship herein is dismissed at cost of appellants, and that execution issue therefor; to which action of the court in refusing to admit and enroll the applicants and each of them as citizens of the Cherokee nation they and each of them at the time excepted.

(DEC. 17, 1897.)

WILLIAM STEPHENS, MATTIE J. AYERS, JACOB SHERMAN	} # 213.
Ayers, Mattie Ayers, Appellants,	
vs.	
THE CHEROKEE NATION, Appellee.	

The appellants herein are given until Jan'y 17, 1898, to file motion for rehearing herein.

110

(JAN'Y 17, 1898.)

WILLIAM STEPHENS, MATTIE J. AYERS, JACOB SHERMAN	} # 213.
Ayers, Mattie Ayers, Appellants,	
vs.	
THE CHEROKEE NATION, Appellee.	

Come the parties as heretofore, and appellants file their motion for a rehearing herein, and the counsel for both the parties hereto argued orally said motion.

In the United States Court for the Indian Territory, Northern District, at Muskogee, Dec. Term, A. D. 1897.

WILLIAM STEPHENS ET AL.	}
vs.	
THE CHEROKEE NATION.	

Come the appellants in the above-entitled cause, by their attorneys, Grace and Forrester, and move the court to vacate and set aside the judgement in this case, rendered by this court on a former day of this term, and to grant a new trial in said case—

First. Because the finding and judgement of the court upon and touching the matters of fact and law in controversy are contrary to

the evidence in the record and in conflict with the law of the case applicable to the facts proven.

Second. Because the finding on the facts and the judgement of the court are in controvention of the provisions of the Constitution of the United States and in conflict with the laws of the land,  
 111 and because the finding on the evidence and the judgement of the court contravene and render ineffective the treaties now subsisting, made by and between the lawful authorities of the United States and the lawful tribal authorities of the Cherokee nation.

Third. Because the judgement of the court herein in its scope and effect deprives these appellants of their interest and inalienable rights as Indians by blood of the Cherokee tribe.

Fourth. Because the judgement of the court in this case in its scope and effect deprives these appellants without the one process of law of their inherent and inalienable interest in the land and moneys now in possession of the Cherokee nation and owned in common, share and share alike, by all the members of the Cherokee tribe residing in the Cherokee nation.

Fifth. Because the judgement of this court affirms a pretended judgement of the commission to treat with the five civilized tribes, which commission was created and existed at the time of the rendition of its said judgement by virtue of act of the Congress of the United States on the 10th day of June, 1896, and which said act of Congress, pretending and assuming to create said commission, was and is in controvention of the Constitution of the United States, and  
 112 on that reason was and is null and void and wholly insufficient to authorize and empower the said commission to treat with the five civilized tribes, to act and perform judicial functions in a lawful manner.

Sixth. By virtue of the judgement of this court, affirming the judgement theretofore rendered by the said commission to treat with the five civilized tribes, these appellants have been denied the equal protection of the laws of the land, and have thereby been deprived of their natural and lawful rights to tribal citizenship and of their common interest in the Cherokee tribal moneys and property, amounting in aggregate value to more than \$4,000 each; this without one process of law.

Seventh. Because of other errors involved in said judgement.

Eighth. Because the court had no jurisdiction of the subject-matter of this cause.

GRACE AND FORRESTER,  
*Att'ys for Appellants.*

(Endorsed as follows:) Filed Jan. 7, 1898. Jas. A. Winston, clerk.



113

(JUNE 23, 1898.)

WILLIAM STEPHENS, MATTIE J. AYERS, JACOB SHERMAN }  
 Ayers, Mattie Ayers, Appellants, } # 213.  
 vs.  
 THE CHEROKEE NATION, Appellee.

On this day the court doth overrule the motion of the above-named appellants for a rehearing herein. It is therefore ordered, considered, adjudged, and decreed by the court that said appellants be not admitted and enrolled as citizens of the Cherokee nation, Indian Territory, and that their petition be, and the same is hereby, dismissed; to which action of the court appellants then and there excepted.

114

WM. STEPHENS ET AL. }  
 vs. } # 213.  
 CHEROKEE NATION.

Mr. R. P. De Graffenried, special master, to whom this case was referred, submits the following report:  
 (For master's report see 88.)

By the COURT: The report in this case is very full, and it seems to clearly set forth all the facts in the case. It covers thirteen pages of typewritten matter.

There is a contention as to whether the principal claimant in this case was of Cherokee blood or whether his mother was or was not a negro. The master finds, however, and reports, from a great preponderance of the evidence, that the mother of Stephens had not a drop of negro blood in her veins; but, on the contrary, that she was one-half white and one-half Indian, as is claimed by the principal claimant in this case. The master finds, therefore, that William Stephens is one-fourth Indian and three-fourths white. It is unnecessary to recapitulate the evidence upon which this conclusion is based. The court accepts the finding of the master as establishing conclusively the fact as stated. It appears from the evidence set forth in the report of the master that the principal claimant, William Stephens, was born in the State of Ohio; that his father, Robert Stephens, was a white man and a citizen of the

United States; that his mother's name was Sarah, and that  
 115 she was a daughter of William Ellington Shoe Boots, and that her father was known as Captain Shoe Boots in the old Cherokee nation. It appears that his mother was born in the State of Kentucky, and that she moved afterwards to the State of Ohio, where she was married to Robert Stephens, father of the principal claimant in this case. William Stephens came to the Cherokee nation, Indian Territory, in the year 1873, and has resided in the Cherokee nation since that time.

Soon after he came to the Cherokee nation he made application for his mother and himself to be readmitted as citizens of the Cherokee nation. The master states as follows: "The commission who

heard this case was convinced of the genuineness of his claim to Cherokee blood, and so reported to the chief, but rejected his application upon a technical ground. Acting upon this report, Chief Joel B. Mayes, in a message to the council, stated that he was convinced of the honesty and genuineness of the claim of the applicant, and wanted the council to pass an act recognizing him as a full citizen, but somehow this was never done."

It is further stated that he has improved considerable property in the nation, and has continuously lived there as a Cherokee  
116 citizen, and at one time was permitted to vote in a Cherokee election. It appears from the evidence in the case that this applicant comes within the following provision of the Cherokee constitution: "Whenever any citizen shall remove with his effects out of the limits of this nation and becomes a citizen of any other government, all his rights and privileges as a citizen of this nation shall cease; Provided, nevertheless, that the national council shall have power to readmit by law to all the rights of citizenship any such person or persons who may at any time desire to return to the nation on memorializing the national council for such readmission." There was a provision precisely similar to this in the constitution of the old Cherokee nation as it existed prior to the removal of the tribe west of the Mississippi river. The provision just quoted is from the constitution of the Cherokee nation as now constituted.

The mother of the principal claimant, as heretofore stated, was born in the State of Kentucky, and from that State she moved to the State of Ohio, where she married the father of the principal claimant in this case. Her status was then fixed as that of one who had taken up a residence in the States. She had ceased to be a citizen of the Cherokee nation, and she cannot be readmitted to citizenship in the nation except by complying with the con-  
117 stitution and laws of the nation as declared by the Supreme Court in the case of The Eastern Band of Cherokee Indians against The Cherokee Nation and The United States.

The master states the claimant was rejected by the commission of the Cherokee nation upon a technical ground. The ground upon which the decision was based was that the names of the claimants did not appear upon any of the authenticated rolls of the present Cherokee nation or of the old Cherokee nation. The commission which passed upon his application was created under the act of the council of December 8, 1886.

Robert Stephens, the father of the principal claimant in this case, was a citizen of the United States and a resident of the State of Ohio, and the mother of the claimant William Stephens had abandoned the Cherokee nation and ceased to be a citizen thereof. Therefore the principal claimant at the time of his birth was a citizen of the United States, taking the status of his father. I doubt whether he could become a citizen of the Cherokee nation without the affirmative action of the Cherokee council. The evidence fails to disclose that he has ever applied to any of the commission that had jurisdiction to admit him as a citizen of the Cherokee nation. The

commission to which he did apply for enrollment as a citizen of the Cherokee nation having held that as his name did not appear upon any of the Cherokee rolls of citizenship, his application was rejected. He never having been admitted to citizenship as required by the constitution and laws of the Cherokee nation, the judgement of the United States commission rejecting this case is affirmed, and the application of the claimants to be enrolled as citizens of the Cherokee nation is denied.

On the 29th day of Aug., 1898, there was filed in the office of the clerk of said court, at Muscogee, the petition for appeal in said cause, which is in words and figures as follows, to wit :

*Petition for Appeal.*

In the United States Court in the Indian Territory, Northern District, at Muscogee, I. T.

WILLIAM STEPHENS, MATTIE J. AYERS, STEPHEN G. AYERS, JACOB S. AYERS, and Mattie Ayers

vs.

THE CHEROKEE NATION, in the Indian Territory.

The plaintiffs above named, to wit, William Stephens, Mattie J. Ayers, Stephen G. Ayers, Jacob S. Ayers, and Mattie Ayers, conceiving themselves aggrieved by the orders, judgements, and decrees entered herein on the 16th day of December, 1897, and the 23rd day of June, 1898, in the above-entitled case, doth hereby appeal from said orders, judgements, and decrees to the Supreme Court of the United States, at Washington, D. C., and pray that this appeal may be allowed and transcript of the record and proceedings and papers on which said order-, judgement-, and decree-~~was~~ made, duly authenticated, may be sent to the Supreme Court of the United States pursuant to an act of Congress entitled "An act making appropriations for contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1898, and for other purposes," approved July 1st, 1898, and therein providing for appeals to the U. S. Supreme Court in citizenship and other cases from the judgements of the U. S. courts in the Indian Territory. The order- and decree- herein is erroneous in this :

(1.) The court erred in not admitting said parties to citizenship in the Cherokee nation.

(2.) The court erred in refusing them citizenship.

(3.) The act of Congress of June 10, 1896, under which court acted, is void.

(4.) The court finds that plaintiffs were Indians; therefore they should be enrolled as citizens.

(5.) Because plaintiffs had not been admitted by Cherokee authority, having been born out of the Indian Territory.

These errors are more fully set forth in specification of errors.

JAMES B. FORRESTER,  
*Solicitor for Plaintiffs.*

And now, on this 2d day of September, 1898, it is ordered that the appeal in this case be allowed as prayed for.

WILLIAM M. SPRINGER,  
*Judge of the U. S. Court in the Indian Territory,  
for the Northern District Thereof.*

(Endorsed as follows:) Filed Aug. 29, 1898. Jas. A. Winston, clerk.

121 On the 29th day of Aug., 1898, there was filed in the office of the clerk of said court, at Muscogee, the assignment of errors in said cause, which is in words and figures as follows, to wit:

*Assignment of Errors.*

WILLIAM STEPHENS, MATTIE J. AYERS, STEPHEN G. AYERS, } Jacob S. Ayers, Mattie Ayers, } vs. THE CHEROKEE NATION. }
--

On this the 29th day of August, 1896, come the above-named appellants or complainants herein, by their solicitor, J. B. Forrester, Esq., and say that in the record and proceedings in the above-entitled cause there is manifest error in this: That the orders and judgments and decrees rendered by the U. S. court in the Indian Territory, northern district, on the 16th day of December, 1897, and June 23, 1898, are erroneous for the following reasons, to wit:

(1.) The court erred in refusing to admit and enrol the above-named complainants as citizens of the Cherokee nation, in the Indian Territory, under the evidence submitted to the court in the case.

122 (2.) The court erred in not admitting said complainants as citizens in the Cherokee nation under the proof adduced in the case.

(3.) The act of Congress approved June 10, 1896, under which the court acted in this case, was unconstitutional and void, Congress having no legal power to confer jurisdiction on the United States commissioners to the five civilized tribes, mentioned in said act, to try and determine the citizenship of these parties.

(4.) The court erred in not admitting and enrolling as citizens of the Cherokee nation these complainants, when the evidence showed and the court so found that they were Indians by blood.

(5.) The court erred in holding that because said William Stephens, the father and grandfather of the other complainants, was born and raised out of the Indian Territory and had never been admitted as a citizen by the Cherokee nation he was not entitled to citizenship in the Cherokee nation.

Wherefore said complainants pray that the orders, judgements, and decrees of said U. S. court in the Indian Territory, for the northern district thereof, be reversed, and that the said court be directed to set aside and annul said orders, judgements, and  
 123 decrees so entered in said cause on the 16th day of December, 1897, and 23rd day of June, 1898, and that it be ordered to enter a judgement and decree granting these complainants the relief prayed for in their original complaint or application for citizenship in the Cherokee nation, and for all equitable and general relief.

JAMES B. FORRESTER,  
*Solicitor for Plaintiffs.*

(Endorsed as follows:) Filed Aug. 29, 1898. Jas. A. Winston, clerk.

124

*Bond.*

Know all men by these presents that we, William Stephens, Mattie J. Ayers, Stephen G. Ayers, Jacob S. Ayers and Mattie Ayers, and C. C. Ayers, are held and firmly bound *with* the Cherokee nation in the full and *first* sum of \$—, — dollars, to be paid to the said Cherokee nation; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal- and dated this — day of August, 1898.

Whereas lately, at the — term, 1897, of the U. S. court in the Indian Territory for the northern district, holden at Muscogee, I. T., in suit pending in said court between William Stephens, Mattie J. Ayers, Stephen G. Ayers, Jacob S. Ayers, and Mattie Ayers, plaintiffs, and The Cherokee Nation, defendant, an order, judgement, and decree was rendered against said plaintiffs denying them and each of them citizenship in the Cherokee nation, and the said plaintiffs have obtained an appeal to the Supreme Court of the United States to reverse said order, judgement, and decree in the  
 125 aforesaid suit, and a citation directed to the said Cherokee Nation, — and admonishing it to be and appear in the Supreme Court of the United States, at Washington, D. C., on the — Monday in —, 1898:

Now, the condition of the above obligation is such that if the said plaintiffs shall prosecute said appeal to effect and answer all damages

and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

WILLIAM STEPHENS,  
MATTIE J. AYERS,  
STEPHEN G. AYERS,  
JACOB S. AYERS,  
MATTIE AYERS,  
By JAS. B. FORRESTER,  
*Their Attorney.*  
C. C. AYERS.

(O K.

WILLIAM T. HUTCHINGS,  
*Att'y for Cherokee Nation.)*

Approved by—

WM. M. SPRINGER,  
*Judge U. S. Court, Indian Territory, Northern District.*

(Endorsed as follows:) Filed Sep. 10, 1898. Jas. A. Winston,  
clerk.

126 On the 10th day of September, 1898, there was filed in the  
office of the clerk of said court, at Muscogee, I. T., the cita-  
tion in said cause, which is in words and figures as follows, to wit:

*Citation.*

The United States of America to the Cherokee Nation, Greeting:

You are hereby cited and admonished to be and appear in the  
Supreme Court of the United States, at Washington, D. C., within  
thirty days from this date, pursuant to a writ of error filed in the  
clerk's office of the United States court in the Indian Territory for  
the northern district, at Muscogee, I. T., wherein William Stephens,  
Mattie J. Ayers, Stephen G. Ayers, Jacob S. Ayers, and Mattie Ayers  
are appellants and you are defendant in error or appellee, to show  
cause, if any there be, why the order, judgment, and decree rendered  
against the said appellants, as in said writ of error mentioned,  
should not be corrected and why speedy justice should not be done  
the parties in that behalf.

Witness the Honorable William M. Springer, judge of the  
127 United States court in the Indian Territory for the northern  
district thereof, this 2d day of September, A. D. 1898.

WM. M. SPRINGER,  
*Judge U. S. Court in the Indian Territory  
for the Northern District.*

Service accepted and acknowledged this 9th day of Sept., 1898.

WILLIAM T. HUTCHINGS,  
*Solicitor for Defendant.*

(Endorsed as follows:) Filed Sep. 10, 1898. Jas. A. Winston,  
clerk.



128 UNITED STATES OF AMERICA, }  
*Indian Territory, Northern Judicial District,* } ss:

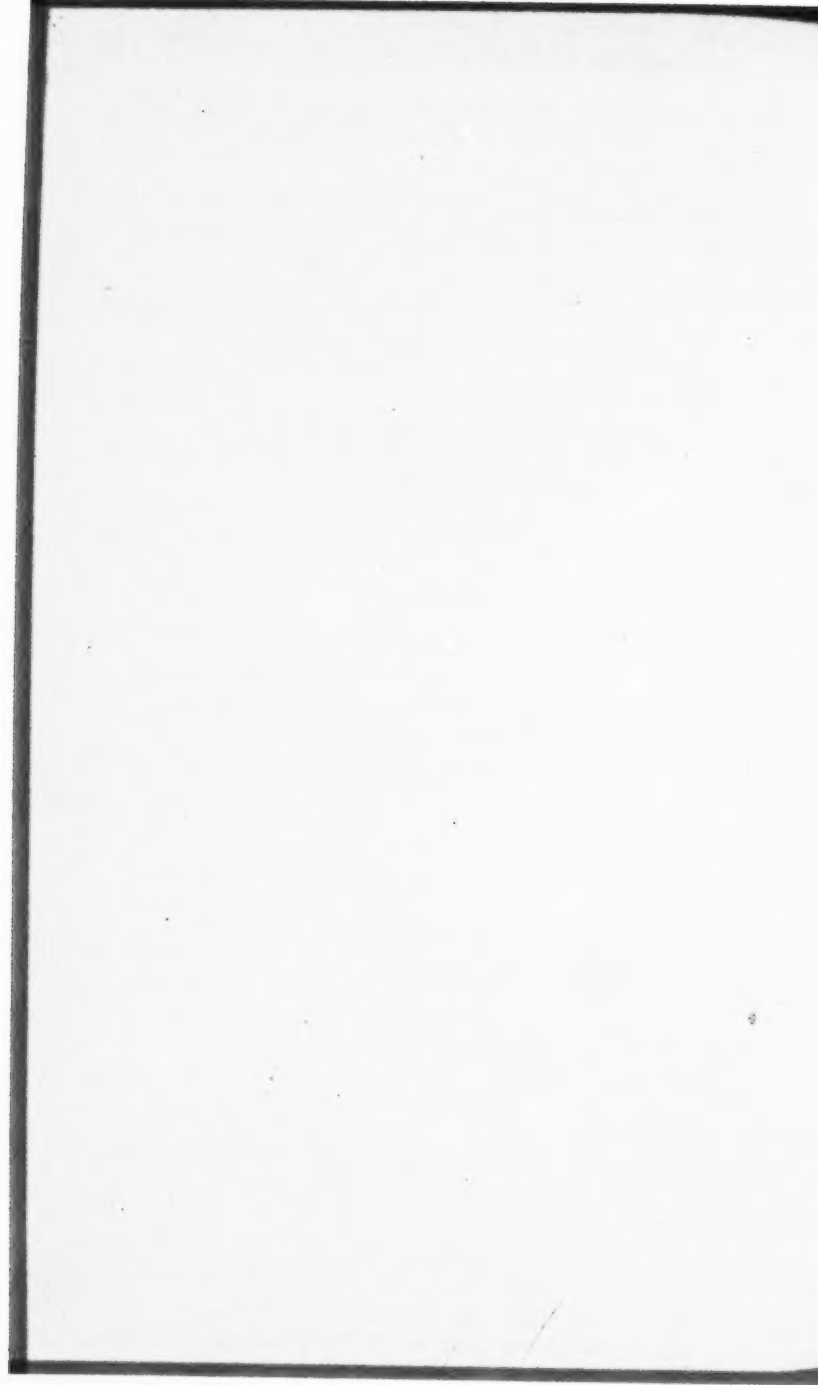
I, James A. Winston, clerk of the United States court in the Indian Territory for the northern district thereof, hereby certify that the foregoing writings annexed to this certificate are true, correct, and complete copies of the originals remaining of record in my office and constitute a true copy of the record and of the assignment of errors of all proceedings in the case entitled William Stephens *et al. vs.* The Cherokee Nation, Indian Territory.

In witness whereof I have hereunto set my hand and the seal of said court this the twenty-sixth day of September, one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the one hundred and twenty-third.

{ Seal United States Court in the Indian Territory, }  
 Northern District, Muscogee.

JAMES A. WINSTON, *Clerk,*  
 By N. S. YOUNG, *Deputy Clerk.*

Endorsed on cover: Case No. 17,008. Indian Territory U. S. court. Term No., 423. William Stephens, Mattie J. Ayers, Stephen G. Ayers, Jacob S. Ayers, & Mattie Ayers, appellants, *vs.* The Cherokee Nation. Filed October 3rd, 1898.



1900

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 433.

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THE CHOCTAW NATION, APPELLANT,

vs.

F. R. ROBINSON.

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APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
TERRITORY.

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FILED OCTOBER 24, 1898.

(17,038.)

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(17,038.)

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 453.

THE CHOCTAW NATION, APPELLANT,

*vs.*

F. R. ROBINSON.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
TERRITORY.

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a UNITED STATES OF AMERICA, }  
 Central District, Indian Territory. }  
 F. R. ROBINSON, Plaintiff, }  
 vs. } Number 157.  
 CHOCTAW NATION, Defendant, }

*Proceedings in Equity.*

Before the Hon. Wm. H. H. Clayton, U. S. judge for the central district of the Indian Territory in the above-styled cause.

Appealed to the Supreme Court of the United States.

*Transcript.*

1 (Application for enrollment.)

To the Hon. United States commission :

Your undersigned petitioner would respectfully represent unto your honors that I am a white man by blood ; that on September 19th, 1873, I obtained a marriage license from the regular authorized clerk of Blue county, Choctaw nation, & thereby complying in every respect with the Choctaw laws, & on the 21st day of September, 1873, I was married to Salina Durant, a daughter of Rev. D. D. Durant, of Durant, Ind. Ter., who was both Choctaw and Chickasaw by blood.

That I had five children by said marriage ; that my wife, Salina Durant, née Robinson, died April 1st, 1884, and that on the 10th day of August, 1884, I married a white woman by the name of Arazona Carter, and have lived with her since. I have exercised the rights of an intermarried citizen, but have never participated in any of the annuities. Therefore I ask your honor to have me enrolled as a intermarried citizen, so I can share in what rights you accede- them.

Respectfully,

F. R. ROBINSON.

Subscribed & sworn to before me this 7 day of August, 1896.

W. A. DURANT,  
*Notary Public.*

Endorsed: F. R. Robinson vs. Choctaw Nation. Filed Sept. 7, 1896. A. S. McKennon, com's Filed Feb. 22, 1897. P. B. Stoner, clerk.

2 (The following affidavits and certificates were pin-ed to the original application and were filed in this office therewith:)

CHOCTAW NATION, }  
 County of Blue. }

In Term of County and Probate Court, July 7th, 1894.

Hon. F. R. Robinson, Greeting:

This is to certify that you are appointed as election judge, to be held at Durant precinct on the 5th day of August, 1894.

F. E. FOLSOM,  
 County and Probate Clerk, Blue County, C. N.

(Marriage License.)

CHOCTAW NATION, }  
 Blue County. }

To all to whom it may concern:

Whereas Fredrick Robinson, a citizen of the United States, this day applying for license in behalf of himself for the express purpose of being joined together in the bonds of wedlock by and between Selina Durant, a citizen of said nation and county; therefore, being satisfied that the said Fredrick Robinson has lived in said nation the time required by law, I do hereby give the said Fredrick Robinson license for the purpose above stated.

Given under my hand and seal this Sept. 19th, 1873.

CALEB IMPSON,  
 Circuit Clerk, C. N.

3

(Affidavit of Pier Durant.)

CENTRAL JUDICIAL DISTRICT, }  
 Indian Territory. }

Before me, W. A. Durant, a notary public in and for the district and Territory above mentioned, personally appeared Pier Durant, to me well known, and, after being duly sworn, on oath says that he was well acquainted with Salina Robinson, formerly the wife of said F. R. Robinson; that they lived at Durant; that said Salina Robinson, was a Choctaw & Chickasaw Indian by blood, and F. Robinson were lawfully married and lived together until her death; that said F. R. Robinson has always been recognized as a citizen & has always had all the rights of an intermarried citizen given him; that affiant is 38 years old and resides at Durant and is a Choctaw by blood.

PIER DURANT.

Subscribed and sworn to before me this the 7th day of August, 1896.

W. A. DURANT,  
 Notary Public.



(Affidavit of D. D. Durant.)

CENTRAL JUDICIAL DISTRICT, }  
Indian Territory. }

Before me, W. A. Durant, a notary public in and for the district and Territory above mentioned, personally appeared D. D. Durant, to me well known, and, after being duly sworn, on oath says that he was well acquainted with Salina Robinson, formerly the wife of said F. R. Robinson; that they lived at Durant; that said Salina Robinson was a Choctaw & Chickasaw Indian by blood, and that said Salina Robinson and F. R. Robinson were lawfully married and lived together until her death.

That said F. R. Robinson has always been recognized as a citizen and has always had all the rights of an intermarried citizen given him.

That affiant is about 56 years old and resides at Durant  
4 and is a Choctaw by blood.

D. D. DURANT.

Subscribed and sworn to before me this the 7th day of August,  
1896.

W. A. DURANT,  
Notary Public.

5 (Answer.)

In the Matter of the Claim of F. R. ROBINSON for Citizenship in the Choctaw Nation.

Now comes the Choctaw Nation, by its lawful attorneys, and says:

First. That this honorable commission has no power and jurisdiction to hear and determine the issues herein involved, because the law creating such commission is unconstitutional and void.

Second. The Choctaw Nation enters its protest against the hearing of this cause, because the methods of procedure adopted by this commission are unjust, unfair, and productive of great fraud and wrong, and the form and method of trial prescribed by said commission are contrary to the Constitution and laws of the United States.

Third. The Choctaw Nation protests against a hearing and determination of this cause, for the reason that the time prescribed by said commission within which this nation must answer and adduce its proof is so limited as to amount to a denial of justice.

Fourth. The Choctaw Nation further says that this commission ought not to entertain this cause, for the reason that it does not appear that the applicant herein has applied for citizenship to the legally constituted tribunal designated by the Choctaw nation for the trial of questions of disputed citizenship.

Fifth. Defendant says that the evidence adduced by the claimant

in this case is not sufficient to establish his citizenship in the Choctaw nation.

Sixth. Defendant says that this commission has no power to enroll the applicant herein, because it appears that said applicant claims to be a citizen of the Choctaw nation by intermarriage, and it does not appear that his rights as such intermarried citizen have been disputed by the Choctaw nation.

Seventh. Defendant says that the applicant herein should not be enrolled, because he has not shown by his evidence that he has not forfeited his rights as such citizen by abandonment or remarriage.

Eighth. And, not waiving the defenses heretofore set out, defendant for further answer herein says:

That there is no evidence to show that this claim has been disputed by the Choctaw nation.

THE CHOCTAW NATION,  
By STUART, GORDON & HAILEY,  
*Its Attorneys.*

Endorsed: Claim of F. R. Robinson for Choctaw citizenship. Filed Sept. 19, 1896. A. S. McKennon, com'r. Filed Feb. 22, 1897. P. B. Stoner, clerk.

6

*(Judgment of Commission.)*

Commissioners: Henry L. Dawes, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Cabaniss, Alexander B. Montgomery. H. M. Jacoway, secretary.

DEPARTMENT OF THE INTERIOR,  
COMMISSION TO THE FIVE CIVILIZED TRIBES,  
FORT SMITH, ARK., Dec. 2, 1896.

F. R. ROBINSON }  
v. } 675.  
CHOCTAW NATION. }

Filed Sept. 7, 1896. Answer filed. Application of F. R. Robinson as an intermarried citizen. Granted.

W. A. DURANT, *Durant, I. T.*

I, H. M. Jacoway, Jr., secretary, do hereby certify that the above and foregoing is a true and correct copy of Choctaw Record C, page 312, of the commission to the five civilized tribes.

Given under my hand and official signature this the 12 day of February, 1897.

H. M. JACOWAY, JR., *Secretary,*  
By HENRY STROUP, *Act.*

Endorsed: Filed Feb. 22, 1897. P. B. Stoner, clerk.

7

*(Petition for Appeal.)*

In the United States Court for the Central District of the Indian Territory, South McAlester.

F. R. ROBINSON	}	Petition for Appeal.
<i>vs.</i>		
CHOCTAW NATION.		

Your petitioner, The Choctaw Nation, represents that heretofore, on the — day of —, 1896, the plaintiff, F. R. Robinson, a white man and a non-citizen of the Choctaw nation, presented his petition to the Dawes commission to be admitted as a citizen of the Choctaw nation by virtue of a marriage with Sallie Durant, a Choctaw Indian woman by blood, which marriage took place in the year 1873; that thereafter, on the 2nd day of December, 1896, the said Dawes commission erroneously admitted the said Robinson to be a citizen of the Choctaw nation. Your petitioner alleges that Sallie Durant Robinson died after her marriage with the plaintiff, F. R. Robinson, and that thereafter, in 1884, the said F. R. Robinson was married to Arizona Carter, a white woman and not a citizen of the Choctaw nation, whereby, as your petitioner alleges, the rights of the said F. R. Robinson as a citizen of the Choctaw nation were forfeited by virtue of the laws of the Choctaw nation.

Wherefore your petitioner, making this its appeal, prays that the order of the said Dawes commission admitting the said plaintiff to citizenship be set aside, and that the said F. R. Robinson, by order of this court, be declared to be a non-citizen of the Choctaw nation.

WM. M. CRAVENS,  
STUART, GORDON & HAILEY,  
*Attorneys for Choctaw Nation.*

Endorsed: F. R. Robinson *vs.* Choctaw Nation. Petition for appeal. Filed Jan. 30, 1897. P. B. Stoner, clerk.

8

*(Notice of Appeal.)*

In the United States Court for the Central District of the Indian Territory, at South McAlester.

F. R. ROBINSON, Plaintiff,	}	Notice of Appeal.
<i>vs.</i>		
THE CHOCTAW NATION, Defendant.		

To F. R. Robinson, the above-named plaintiff:

You are hereby notified that an appeal has been taken from the judgment of the Dawes commission in the above-entitled cause, and petition for said appeal has been filed in the United States court at South McAlester.

THE CHOCTAW NATION,  
By WM. M. CRAVENS AND  
STUART, GORDON & HAILEY,  
*Its Attorneys.*

INDIAN TERRITORY, }  
*Central District.*

James Elliott, being first duly sworn, states upon oath tha- he is not interested in this cause; that he was present and saw a true copy of the above notice sent by registered mail from South McAlester to the above-named plaintiff, at Durant post-office, on the 9 day of February, 1897.

JAS. ELLIOTT.

Subscribed and sworn to before me on this 9th day of February, 1897.

JOE HILLMAN,  
*Notary Public.*

[SEAL.]

Endorsed: F. R. Robinson vs. Choctaw Nation. Notice of appeal. Filed Feb. 10, 1897. P. B. Stoner, clerk.

9

*(Motion for Addition- Testimony.)*

In the United States Court for the Indian Territory, Central Judicial District.

FREDRICK ROBINSON, Appellant,	} Motion.
<i>vs.</i>	
THE CHOCTAW NATION, Appellee.	

Comes now the appellant, by his attorney, W. A. Durant, and moves the court to allow the introduction of new and additional evidence to that filed before the Dawes commission, to wit, a certificate of enrollment, hereto attached, and, for reason why he should be allowed to file said evidence, saith that at the time his case was passed upon by the Dawes commission the enrollment had not been made by the Choctaw nation; that he was only enrolled since the Dawes commission acted as aforesaid, and that it was impossible to have procured such evidence at that time.

Wherefore he prays that he be allowed to use same now in his appeal.

W. A. DURANT,  
*Attorney for F. R. Robinson, Appel't,*  
 By W. L. RICHARDS, *Co-council.*

W. L. Richards states on oath that the facts set forth in the foregoing motion *be* true.

Subscribed and sworn to before me this — day of of June, 1897.

(Attached to said motion and filed with it is the following:)

Executive office, Choctaw nation; Green McCurtain, principal chief.

SAN BOIS, I. T., June 2, 1897.

This is to certify that Fredrick Robinson (age 40 yrs.) is regularly enrolled on the revised rolls of the Choctaw nation as a citizen by intermarriage of said Choctaw nation, living in Blue county.

10 Given under my hand and the great seal of the Choctaw nation on this 2nd day of June, 1897.

[SEAL.]

WALLACE BOND,  
Sec'y to Principal Chief, C. N.

Endorsed on back of motion: Fredrick Robinson vs. Choctaw Nation. Motion. Filed in open court June 9, 1897. E. J. Fannin, clerk.

11

(Motion for Additional Testimony.)

Before the United States Court for the Central District of the Indian Territory.

FRED ROBINSON, Appellant, }  
vs. } Motion.  
CHOCTAW NATION, Appellee. }

Comes now the appellant, Fred Robinson, and moves the court to allow the introduction of the following testimony, in addition to that introduced on the original trial of this cause, namely, a certificate from the chairman of the enrolling commission of the Choctaw nation to the effect that the appellant was and is enrolled by said commission as a citizen of the Choctaw nation.

That — could not by any diligence have procured and introduced said evidence on the original trial of said cause, because the said enrolling commission of the Choctaw nation did not enroll the appellant until after the time expired for the filing of proof with the Dawes commission on the original trial of this cause.

W. A. DURANT,  
Att'y for Appellant.

W. A. Durant states on oath that he is attorney for the above-named appellant, and that the facts therein are true.

W. A. DURANT.

Subscribed and sworn to before me this 29 day of March, 1897.

P. B. STONER, Clerk.

Endorsed: F. R. Robinson vs. Choctaw Nation. Filed March 29, 1897. P. B. Stoner, clerk.

12

*(Report of Special Master.)*

F. R. ROBINSON, Plaintiff, <i>vs.</i> THE CHOCTAW NATION, Defendant.	}	Report of Special Master in Chancery.
--	---	--

This cause was duly filed before the Dawes commission September 7th, 1896, the plaintiff claiming citizenship by virtue of an intermarriage with a Choctaw woman.

The defendant answered on appeal, denying the jurisdiction and authority of the Dawes commission to hear and determine the cause and denying the legality of the rules and procedure of the Dawes commission and denying that the evidence adduced by the plaintiff is sufficient to establish his claim to citizenship by a subsequent marriage to a white woman.

The Dawes commission gave judgment for plaintiff December 2, 1896, from which the defendant appealed January 30, 1897, assigning as error that the Dawes commission erred in their judgment, because defendant alleges plaintiff forfeited his rights as a citizen of the Choctaw nation by a subsequent marriage with a white woman. Plaintiff has filed no answer to the petition for appeal.

From the evidence adduced in the case I find that the plaintiff was married on the 21st day of September, 1873, in the Choctaw nation and according to the laws of the Choctaw nation, to a recognized Choctaw and Chickasaw Indian woman by blood, and has resided in the Choctaw nation since that time; that the said Indian wife died April 1st, 1884, and August 10, 1884, plaintiff married a white woman.

Respectfully submitted this 22 day of June, 1897.

W. B. RUTHERFORD,  
*Special Master in Chancery.*

Endorsed: F. R. Robinson *vs.* Choctaw nation. Report of special master in chancery. Filed June 22, 1897. E. J. Fannin, clerk.

13

*(Record Entries.)*

In the United States Court for the Central District of the Indian Territory, at South McAlester, June 29th, 1897, April Term, 1897.

F. R. ROBINSON <i>vs.</i> CHOCTAW NATION.	}	No. 157. Judgment.
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On this day this cause came on to be heard in open court, the same being the 29th day of June, 1897, and one of the regular judicial days of the April, A. D. 1897, term of court. Both plaintiff and defendants announced ready for trial, and the court, having heard the evidence and argument of counsel, finds that the plaintiff, F. R. Robinson, is a member and citizen of the Choctaw nation by inter-

marriage, having heretofore been legally and in compliance with the laws of the Choctaw nation married to a Choctaw woman by blood, and that said F. R. Robinson was by the duly constituted authorities of the Choctaw nation placed upon the last roll of the members and citizens of the Choctaw nation prepared by the said Choctaw authorities, and that his name now appears upon the last completed rolls of the members and citizens of the said Coctaw nation.

It is therefore ordered, adjudged, and decreed by the court that the plaintiff, F. R. Robinson, is a member and citizen, by intermarriage, of the Choctaw nation and entitled to all the rights, privileges, immunities, and benefits in said nation as such intermarried citizen and member.

It is further ordered, adjudged, and decreed by the court that the clerk of this court prepare a certified copy of this judgment and transmit the same to the commissioners to the five civilized tribes, and that the said commissioners place the name of the said F. R. Robinson upon the rolls, prepared or to be prepared by them, of the members and citizens of the Choctaw nation.

It is further ordered, adjudged, and decreed by the court that the plaintiff, F. R. Robinson, herein named have and recover of and from the *the* defendant, The Choctaw Nation, all his costs herein laid out and expended; for all of which let execution issue.

14

WEDNESDAY, *September 21st*, 1898.

May Term, 1898.

(Caption omitted.)

On this day come the defendant, The Choctaw Nation, by its attorney, James M. Shackelford, and presents a petition praying an appeal in this case to the Supreme Court of the United States; which petition is ordered filed, and the same is hereby granted.

Also at the same time, presents assignment of errors, and the same is ordered filed.

Also presents copy of appeal and appeal bond; which bond is by the court approved, and both are ordered filed.

Whereupon citation, returnable October 20th, 1898, was issued and signed by the court.

15

(Copy of *Petition for Appeal*.)

In the United States Court for the Central District of the Indian Territory, at South McAlester.

F. R. ROBINSON, Plaintiff,	} No. 157. Petition for Appeal and Order Granting Same.
<i>vs.</i>	
CHOCTAW NATION, Defendant.	

The above-named defendant, deeming itself aggrieved by the decree made and entered in the above-entitled cause on the 29th day of June, 1897, hereby appeals from said order and decree to the Su-



preme Court of the United States for the reasons specified in the assignment of errors filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

This 21st day of September, 1898.

JAMES M. SHACKELFORD,  
*Solicitor for Defendant.*

The foregoing claim for appeal is allowed and bond for costs fixed at one hundred dollars.

This 21st day of September, 1898.

WM. H. CLAYTON, *Judge.*

Endorsed : Filed in open court Sep. 21, 1898. E. J. Fannin, clerk.

16

*(Assignment of Errors.)*

In the United States Court for the Central District of the Indian Territory, at South McAlester.

F. R. ROBINSON, Plaintiff,	} Assignment of Errors.
vs.	
CHOCTAW NATION, Defendant.	

The defendant in this action, in connection with its petition for appeal, makes the following assignment of errors which it avers — upon the trial of this cause, to wit :

First. The court erred in holding that the act of Congress creating a commission to pass upon the citizenship of applicants in the Choctaw nation and the right to appeal to said court was constitutional.

Second. The court erred in overruling the plea to the jurisdiction of the Dawes commission and said court to pass upon the citizenship of the applicant herein.

Third. The court erred in holding that the laws, usages, and customs of the Choctaw nation did not control and govern admission of applicants herein.

Fourth. The court erred in holding that the Choctaw nation did not have a right to pass a law relative to citizenship in said Choctaw nation when said law in any way modified or changed a treaty of the Choctaw nation with the United States.

Fifth. The court erred in entering a decree for the plaintiff in this cause.

JAMES M. SHACKELFORD,  
*Solicitor for Defendant.*

Endorsed : Filed in open court Sep. 21, 1898. E. J. Fannin, clerk.

17

*(Bond on Appeal.)*

In the United States Court for the Central District of the Indian Territory, at South McAlester.

F. R. ROBINSON, Plaintiff,	} Bond on Appeal.
<i>vs.</i>	
CHOCTAW NATION, Defendant.	

Know all men by these presents that we, The Choctaw Nation, as principal, and T. J. Phillips and J. J. McAlester, as sureties, are held and firmly bound unto the plaintiff, F. R. Robinson, in the just and full sum of one hundred dollars, to be paid to the said plaintiff, his attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 21st day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a court of the United States for the central district of the Indian Territory, in a suit pending in said court between F. R. Robinson, plaintiff, and The Choctaw Nation, defendant, a decree was rendered against the said Choctaw Nation, and the said Choctaw Nation having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to the said F. R. Robinson, citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 20th day of October, 1898:

Now, the condition of the above obligation is such that if said Choctaw Nation shall prosecute said appeal to effect and answer all damages and costs if it fails to make good the said plea, then the above obligation to be void; otherwise to remain in full force and virtue.

18

CHOCTAW NATION,  
By JAMES M. SHACKELFORD, *Its Att'y.*  
T. J. PHILLIPS.  
J. J. McALESTER.

Sealed and delivered in the presence of—  
JAMES E. GRESHAM.  
J. H. WILKINS.

Approved by—

WM. H. H. CLAYTON,  
*Judge of the United States Court for the  
Central District of the Indian Territory.*

Endorsed: F. R. Robinson vs. Choctaw Nation. Bond on appeal.  
Filed in open court Sept. 21st, 1898. E. J. Fannin, clerk.

*Citation.*

UNITED STATES OF AMERICA, ss :

To F. R. Robinson, Greeting :

Whereas the Choctaw Nation has lately appealed to the Supreme Court of the United States from a decree lately entered in the United States court for the central district of the Indian Territory, made in favour of you, the said F. R. Robinson, and has filed the security required by law :

You are therefore cited to appear before said Supreme Court, at the city of Washington, on the 20th day of October, 1898, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of South McAlester, in the central district of the Indian Territory, this 21st day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

WM. H. H. CLAYTON,  
*Judge of the United States Court for the  
Central District of the Indian Territory.*

Endorsed : We hereby accept service of the within this 22nd day of September, 1898. F. R. Robinson, by W. A. Durant, his attorney. Filed in open court Sept. 21st, 1898. E. J. Fannin, clerk.

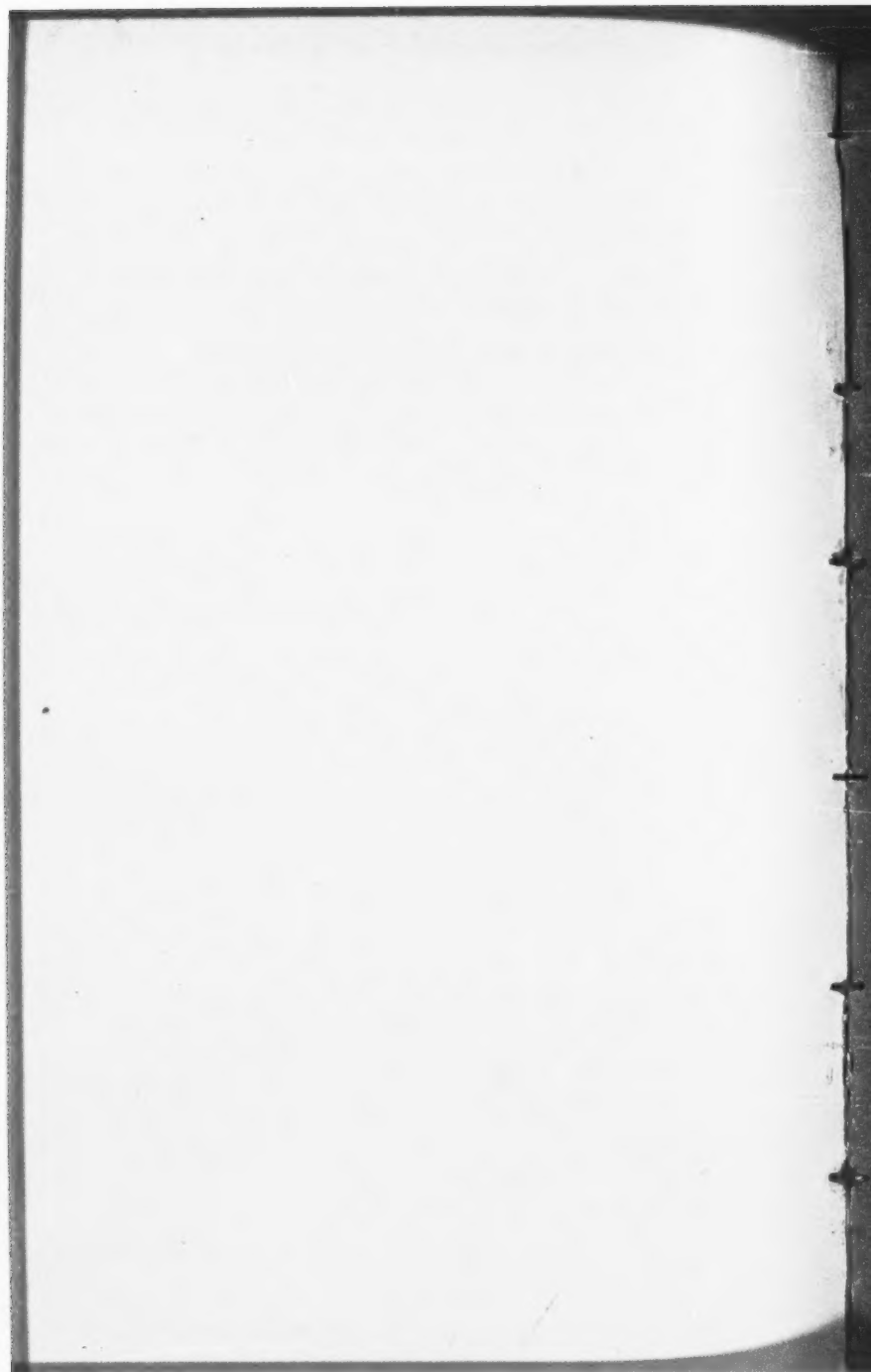
20 UNITED STATES OF AMERICA, }  
*Central District of the Indian Territory. }*

I, E. J. Fannin, clerk of the United States court for the central district of the Indian Territory, do hereby certify that the foregoing is a true and correct transcript of the record, proceedings, and papers filed in my office in the case of F. R. Robinson vs. The Choctaw Nation, which case has been appealed to the Supreme Court of the United States by the defendant herein.

In testimony whereof I hereunto set  
Seal United States Court, my hand and seal of office, at South  
Central District, in the McAlester, in said district, this 22nd day  
Indian Territory. of September, A. D. 1898.

E. J. FANNIN, *Clerk,*  
By I. M. DODGE,  
*Deputy Clerk.*

Endorsed on cover: Case No. 17,038. Indian Territory U. S. court. Term No., 453. The Choctaw Nation, appellant, vs. F. R. Robinson. Filed October 24th, 1898.



18100

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 461.

JENNIE JOHNSON ET AL., APPELLANTS,

vs.

THE CREEK NATION.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
TERRITORY.

FILED OCTOBER 27, 1898.

(17,046.)

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(17,046.)

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 461.

JENNIE JOHNSON ET AL., APPELLANTS,

*vs.*

THE CREEK NATION.

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 APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
TERRITORY.
 

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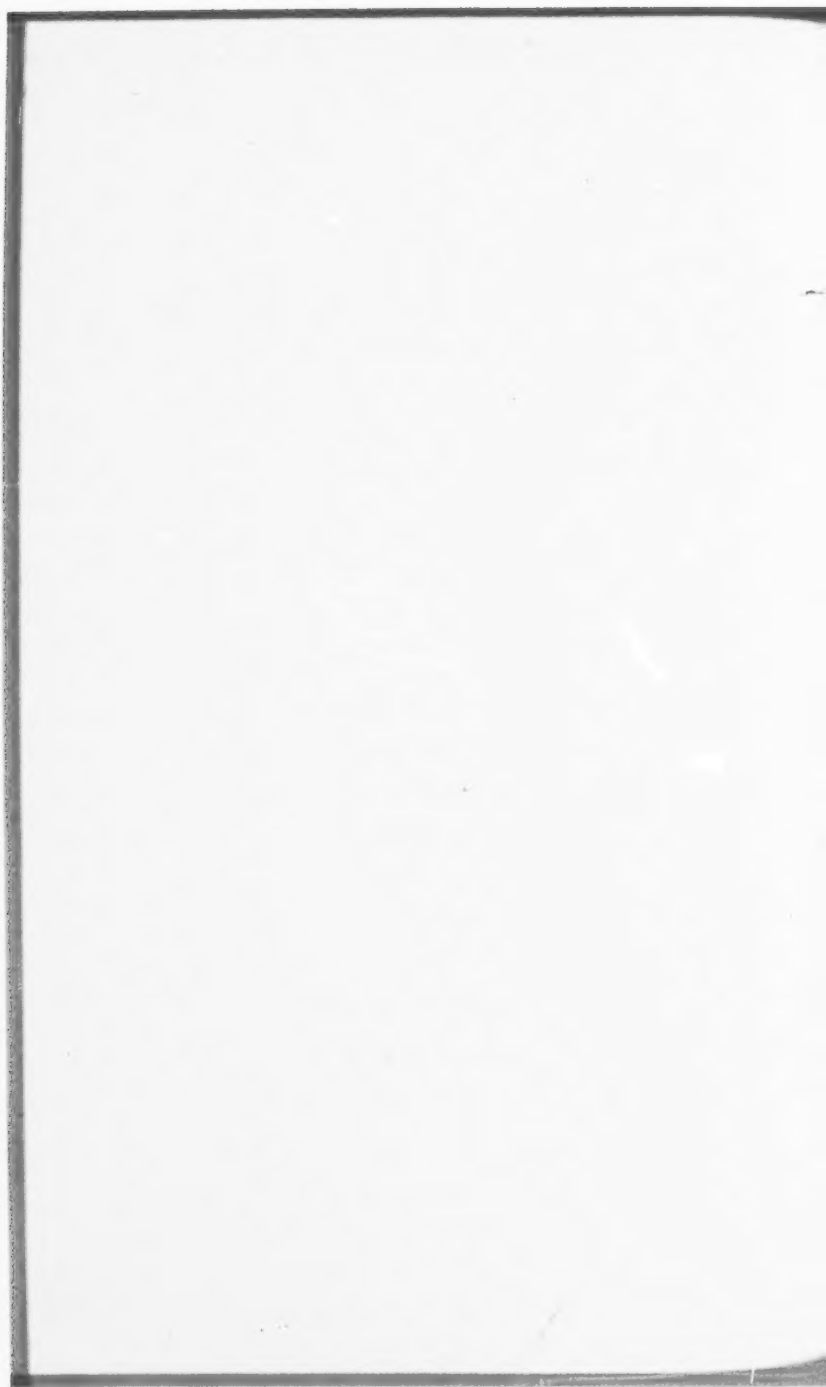
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- 1 UNITED STATES OF AMERICA, } ss:  
*Indian Territory, Northern District,* }

Pleas in the United States court for the northern district of the Indian Territory, at Muscogee, in the matter of the application of Jennie Johnson and others for citizenship in the Cherokee nation.

Before the Hon. William M. Springer, judge of said court.

On the — day of — there was filed in the office of the clerk of said court, at Muscogee, the application of Jennie Johnson and others in said cause, which is in words and figures as follows, to wit:

- 2 To the Honorable Henry L. Dawes, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Cabaniss, and Alexander B. Montgomery, United States commissioners, authorized by an act of Congress of June 4th, 1896, to hear and determine claims to citizenship in the five civilized tribes in the Indian Territory.

GENTLEMEN OF THE SAID COMMISSION:

Your petitioners, the undersigned Thomas B. Posey and his children mentioned below; Eliza H. Allen and her children and grandchildren mentioned below; Robert T. Barber and his children named below and his ward, Jesse M. Fant, mentioned below; Benjamin A. Barber and his children mentioned below; James M. Barber, for himself and his children named below; John C. Barber, for himself and his children named below; Martha S. Coker, for herself and her children hereinafter named; Thomas B. Posey, for himself and his children hereinafter named; William Mayfield, for himself and one child; George A. Posey, for himself and child hereinafter named; Benjamin B. Posey, Mary L. Posey, Nina G. Posey, for herself and her children named hereinafter; Ambrose B. Posey, for himself and his children hereinafter named; George W. Posey, for himself and his children hereinafter named; Jennie Johnson, for herself and her children hereinafter named; William Posey, R. F. Barber, R. W. Barber, H. J. Barber, for himself and his child named below; L. E. Barber, Mollie F. Stockton, for herself and children named below; George W. Stenson, for himself and his child below named; Annie Hicks, for herself and her children named below; James M. Posey, Jr., Mary J. Covey,

- 3 for herself and her children named below; Eliza M. Bay-singer, for herself and her children named below; John W. Allen, Ben T. Allen, Mattie A. Allen, Joseph M. Allen, Richard T. Posey, for himself and his children named below; James S. Posey, for himself and his children hereinafter named; Walter Posey, for himself and his children hereinafter named; John M. Posey, for himself and his children hereinafter mentioned; Robert T. Barber, aforesaid, guardian of Robert Garner, his grandson; Susan L. Garner, for herself and her children mentioned below--

Respectfully state to your honorable body that they and each of them, and their children hereinafter mentioned, and their wards hereinafter named, are all Creek Indians by blood and descendants of Benjamin and Eliza Posey, hereinafter named, and are each and all entitled to be admitted and enrolled as members of the Creek tribe of Indians.

That their claims to such admission are not barred by any statute of limitations, and that a large number of your petitioners and their ancestors aforesaid and other relatives by consanguinity have heretofore been admitted to such membership and have been enrolled by authority of the Creek nation, have been recognized as such member- by the Creek Indians, and have drawn and shared in the disbursement of monies due from and paid by the United States to the said Creek tribe of Indians.

4 Your petitioners further state that the genealogical statements and allegations of relationship of your petitioners and others are truly and correctly stated in words and figures following, to wit:

Genealogy of the Berryhill, Posey, Allen, Barber, Coker, Stockton, Mayfield, Johnson, Covey, Baysinger, Stinson, and Fant and Vance, Oswal, Ishmael, Rickett, Hicks, Garner, &c., families.

John Berryhill was the father of Nancy Berryhill, who married Posey, both of whom were Creek Indians by blood.

Benjamin Posey was the son of Nancy Posey, *née* Berryhill. Benjamin Posey, who was seventy-six years of age in 1882, when he made his affidavit in this case, was a Creek Indian by blood.

The father and mother of Benjamin and Eliza Posey, his wife, were brothers and sisters and the lawful descendants of John Berryhill, and Eliza Posey, *née* Berryhill, is the daughter of Thos. Berryhill, a Creek Indian by blood.

The following are the sons and daughters of the said Benjamin and Eliza Posey, to wit:

Class	1. Sarah A. Posey,	born May 10th, 1825.
"	2. Thos. B. Posey,	" Sept. 14th, 1826.
"	3. Picby Jane Posey,	" Aug. 13th, 1828.
"	4. Benjamin Belle Posey,	" Dec. 9th, 1829 (dead).
"	5. John D. Posey,	" May 2nd, 1831.

5

Class	6. Martha A. Posey,	born Oct. 3rd, 1832.
"	7. Narcissa Posey	" Aug. 2nd, 1834.
"	8. Ureah Posey,	" Feb. 6th, 1836.
"	9. Nancy Green Posey,	" Aug. 29th, 1837.
"	10. Eli Posey,	" March 20th, 1839.
"	11. Tinsley E. Posey,	" Jan. 31st, 1841.
"	12. James M. Posey,	" June 30th, 1842.
"	13. George W. Posey,	" Sept. 6th, 1844 (dead).
"	14. William A. J. Posey,	" June 16th, 1846.
"	15. Eliza H. Posey,	" Oct. 4th, 1849.

Grandchildren of Ben and Eliza Posey, with Indian parent named first.

Genealogy of the Berryhill-Posey family.

Class 1. Sarah A. Posey, daughter of Ben and Eliza Posey and granddaughter of Nancy Posey, *née* Berryhill. Sarah A. Posey married Silas H. Barber, and the children of Sarah A. Barber, *née* Posey, and Silas H. Barber, her husband, are as follows, to wit:

Robert T. Barber, born Aug. 25th, 1846.

Ben A. Barber, " 1850.

James M. Barber, " Jan. 17th, 1852.

John C. Barber, " March 20th, 1853.

Martha S. Barber, " Dec. 21, 1857.

Mary A. Barber, " Jan. 31st, 1867, and died.

6

" 2. Thos. B. Posey is the second child of said Benjamin and Eliza Posey and the brother of Sarah A. Barber, *née* Posey, and has four children, to wit:

Richard T. Posey, James S. Posey, Walter Posey, and John M. Posey, ages in the order named, 44, 39, 37, 35.

" 3. Picby Jane Posey, dead; has no children.

" 4. Benjamin Bell Posey died, leaving one child, to wit, Sallie E. Ricketts, *née* Posey.

Class 5. John D. Posey, dead; no issue.

" 6. Martha A. Posey married — Mayfield and has the following children, to wit, William Mayfield.

" 7. Narcissa Posey died without issue.

" 8. Uriah Posey has five children, to wit: George A. Posey, Benjamin B. Posey, Mary Lula Posey, Nina G. Posey, and Ambrose B. Posey.

" 9. Nancy Green Posey married — Oswalt and died, leaving two children, to wit: M. W. Oswalt and Maggie Oswalt.

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" 10. Eli Posey had a wife and died, leaving four children, to wit: George W. Posey, Jennie Johnson, *née* Posey; William Posey, and Mary Vance, *née* Posey.

" 11. Tinsley E. Posey married John Stinson, and he died and she became the second wife of Silas H. Barber. The said Tinsley E. Barber and her husband, Silas H. Barber, had the following children, to wit:

R. F. Barber.

R. W. Barber.

H. J. Barber.

L. E. Barber.

Sarah A. Barber, *née* Posey, was the first wife of said Silas H. Barber, and their children, Robert T. Barber, Ben A. Barber, James M. Barber, John C. Barber, Martha S. Barber, and Mary A. Barber, are half brothers and sisters

- to the said above R. F., R. W., H. J., and L. E. Barber by the same father, and whose mothers were sisters and the daughters of Benjamin and Eliza Posey above named.
- 8 The said Tinsley E. Stinson, *née* Posey, had two children by John Stinson, to wit: Mollie F. Stinson, born October 17th, 1863, and George W. Stinson, born July 15th, 1867.
- Class 12. James M. Posey, the son of Benjamin and Eliza Posey. Said James M. Posey died, leaving two children, to wit: Annie Hicks, *née* Poséy, and James M. Posey.
- " 13. George W. Posey died without issue.
- " 14. William A. J. Posey died, leaving four children, to wit: M. A. Posey, Albert W. Posey, Robert A. Posey, and Henry Posey.
- " 15. Eliza Hulda Posey, wife of Joseph M. Allen, who have six children, to wit: Mary J. Covey, *née* Allen, age 27; Eliza M. Baysinger, *née* Allen, age 26; John W. Allen, age 23; Ben T. Allen, age 22; Mattie M. Allen, age 18; Joseph M. Allen, age 16.

Great-grandchildren of Ben and Eliza Posey, with name of Indian parent first.

- Class 1. Robert T. Barber, the eldest son of Silas H. and Sarah A. Barber, *née* Posey, has eight children, to wit: Nettie, John, Lula, Pearl, Walter, Mary, Dovie, Sholla Barber, ages in the order named—15, 12, 10, 8, 6, 4, 2, and six months.
- 9 Ben A. Barber, brother of said Robert T. Barber, has six children, to wit: Martha E., age 14 years; Eva A., age 11 years; Ida B., age 8 years; Edward H., age 6 years; Sarah E., age 4 years; Dora B. Barber, age 2 years.
- James M. Barber, brother of Robert T. and Ben A. Barber, has the following children, to wit, Sarah E., age 19; Bertie E., age 17; John S., age 13; Pearl I., age 9; Niles, age 7, and Mary M. Barber, age 5 years.
- John C. Barber, brother of Robert T., Ben A., and James M. Barber, has the following children, to wit: Susan L. Garner, *née* Barber, age 23 years; Josephine C., age 19; Robert T., age 8 years.
- Martha S. Coker, *née* Barber, the sister of Robert T., Ben A., James N., and John C. Barber, has six children, to wit: Silas G., age 18; James M., age 17; Robert T., age 14; Eva, age 12; Maud F., age 8; Alva L., age 3 years.
- 10 Mary A. Fant, *née* Barber, died leaving one child, to wit, Jesse M. Fant, age 11 years. Said Mary A. Fant is the sister of Robert T., Ben A., James M., John C. Barber, and Martha S. Coker.

Great-grandchildren of Ben and Eliza Posey, with Indian parents first named.

Class 2. Richard T. Posey has four children, to wit: A. W. Posey, age 16; D. D. Posey, age 10; J. R. Posey, age 7; Beatrice Posey, age 3 years.

James S. Posey, brother of Richard T., has five children, to wit: A. W. M. Posey, age 15; Thomas U. Posey, age 12; Lela L. Posey, age 7; Nora S. Posey, age 4, and one infant, age one year.

Walter Posey, the brother of Richard T. and James S. Posey, has two children, to wit: Sarah E. Posey, age 14; Laura S. Posey, age 4 years.

John M. Posey, brother of Richard T., James S., and Walter Posey, has four children, to wit: Annie L. Posey, age 10 years; John W. Posey, age 7 years; James H. Posey, age 5 years, and Walter A. Posey, age 2 years.

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Class 3. Picby J. Posey.

Class 4. Sallie E. Rickets, *née* Posey, the daughter of Benjamin Bell Posey, deceased, and the granddaughter of Ben and Eliza Posey, has three children, all of whom, together with their mother, Sallie E. Rickets, are adopted citizens of the Creek nation by blood, whose names are on the statute of said nation, at page 104, compilation of 1893.

" 5. John D. Posey, no issue.

" 6. William Mayfield, son of Martha A. Mayfield, *née* Posey.

" 7. Narcissa Posey died without issue.

" 8. George A. Posey, son of Uriah Posey and a grandson of Ben and Eliza Posey, has one child, to wit, Edward U. Posey, age 8 years.

12

Great-grandchildren of Ben and Eliza Posey.

Benjamin B. Posey, age 24 years, son of Uriah and a grandson of Ben and Eliza, has no children.

Mary Lula Posey, age 22 years, sister of George A. Posey and a granddaughter of Ben and Eliza Posey, has no children.

Nina G. Posey, sister of George A., Benjamin B., and Mary L. Posey, has one child, to wit, Fred Posey, age one year.

Ambrose P. Posey, brother of George A., Benjamin B., Mary L., and Nina G. Posey, has two children, to wit: Thomas Posey, age 3 years, and Laura E. Posey, age one month.

" 9. M. W. Oswalt, son of Nancy Green Oswalt, *née* Posey, and M. W. Oswalt, is the grandson of Ben and Eliza Posey, and has one child, to wit, W. M. Oswalt, age —. Said M. W. and his son, W. M. Oswalt, appear as Creek citizens on the statute of the Creek nation, at page 103, compilation of 1893, and at page 178 of Creek statute of said nation, 1890, undisputed citizens.



- 13 Maggie Ishmael, *née* Oswalt, sister of M. W. Oswalt aforesaid, has five children, to wit: Jane Ishmael, age —; James Ishmael, age —; Maggie Ishmael, age —; Fannie Ishmael, age —, and Mary Ishmael, age —, whose names appear as members of the Creek tribe of Indians on the rolls of said nation for Broken Arrow town, undisputed Creek citizens of Creek nation.
- “ 10. George W. Posey, son of Eli Posey and grandson of Ben and Eliza Posey. Said George Posey has three children, to wit: Katie Posey, age 12 years; Annie Posey, age 11 years, and Claud Posey, age 7 years.
- Jennis Johnson, *née* Posey, daughter of Eli Posey and sister of George W. Posey, has four children, to wit: Clarence Johnson, age 11 years; Mary F. Johnson, age 9 years; Jennie B. Johnson, age 4 years, and Walter A. Johnson, age 2 years.
- Great-grandchildren of Ben and Eliza Posey.
- William Posey, age 22 years, brother of George W. Posey and Jennie Johnson aforesaid and son of Eli Posey, has no children.
- Mary Vance, *née* Posey, sister of George W. Posey, Jennie Johnson, and daughter of said Eli Posey, has children,
- 14 to wit: Joseph Vance, age —; Florence Vance, age —, and Benjamin Vance, age —. The said Mary Vance and her said children appear on the census roll of Broken Arrow town, Creek nation, and upon the statute of said nation of 1893, page 103, and at page 178 of the statute of said nation of 1890, as members of the Creek tribe, but their names appear as Vanns by mistake or oversight instead of Vance as it should have been.
- Class 11. Mollie F. Stockton, *née* Stinson, daughter of Tinsley E. Posey, the wife of John Stinson, deceased, has three children, to wit: Roy M. Stockton, age 4 years; Harry T. Stockton, age 3 years, and Grover C. Stockton, age one year.
- George W. Stinson, son of said Tinsley E. Stinson, *née* Posey, and said George W. Stinson, is the brother of said Mary F. Stockton, and has one child, to wit, Jack Stinson, age one year.
- R. F. Barber, the son of Tinsley E. Posey, daughter of Ben and Eliza Posey, and said R. F. Barber, is the son of Silas H. Barber, the second husband of said Tinsley E. Stinson, *née* Posey; said R. F. Barber has no children.
- 15 R. W. Barber, full brother of said R. F. Barber, and has no children.
- H. J. Barber, the full brother of R. F. and R. W. Barber, has one child, to wit, Jesse J. Barber, age 2 years.
- L. E. Barber, the full brother of R. F., R. W., and H. J. Barber, and children of said Tinsley E. and Silas H. Barber, has no children.

JENNIE JOHNSON ET AL. VS. THE CREEK NATION.

- " 12. Annie Hicks, *née* Posey, the daughter of James M. Posey, has two children, to wit: Ruth Hicks, age —, and Paul B. Hicks, age —.  
James M. Posey, Jr., son of James M. Posey, Sr., is the brother of Annie Hicks; has no children.
- " 13. George W. Posey (died without issue), son of Ben and Eliza Posey.
- " 14. M. A. Posey, son of William A. J. Posey, has no children. Albert W. Posey, the son of said William A. J. Posey and brother of M. A. Posey aforesaid, has one child, to wit, ———, *all of whom are* on the census roll of Broken Arrow town, Creek nation, as members of the Creek tribe of Indians, and *their* rights are undisputed as Creeks by blood.
- 16 Robert A. Posey, brother of M. A. Posey and Albert W. Posey, has two children, all on said census roll, and their rights as Creek citizens are undisputed.  
Henry Posey, brother of M. A., A. W., and Robert A. Posey, is also on said roll, and his rights as a Creek citizen are undisputed.
- Class 15. Mary J. Covey, age 27, *née* Allen, the daughter of Eliza H. and her husband, Joseph M. Allen, has two children, to wit: John M. Covey, age 9 years, and William M. Covey, age 5 years.  
Eliza N. Baysinger, *née* Allen, age 26, the daughter of said Joseph M. and E. H. Allen and the sister of Mary J. Covey, has two children, to wit: Columbus Baysinger, age 6 years, and Nellie Baysinger, age 3 years.
- 17 John W. Allen, age 23 years, son of said Joseph M. and E. H. Allen and brother of Mary J. Covey, *née* Allen, and Eliza M. Baysinger, has no children.  
Ben T. Allen, age 22 years, son of said Joseph M. and E. H. Allen and brother of M. J. Covey, E. M. Baysinger, and John M. Allen, has no children.  
Mattie A. Allen, age 18 years, daughter of J. M. and E. H. Allen and sister of M. J. Covey, E. M. Baysinger, J. W. Allen, and Ben L. Allen.  
Joseph Allen, Jr., age 16, son of J. M. and E. H. Allen and brother of M. J. Covey, E. M. Baysinger, J. W. Allen, Ben T. Allen, and Mattie A. Allen, has no children.

The great-great-grandchildren of Ben and Eliza Posey, with the Indian parent first named.

- Class 1. Jennie Garner, *née* Barber, daughter of Robert T. Barber, son of Silas H. and Sarah A. Barber, has one child, to wit, Robert T. Garner, age 6 years.  
Susan L. Garner, *née* Barber, daughter of John C. Barber, son of Silas H. and Sarah A. Barber, has two children: to wit, John L. Garner, age 6 years, and William B. Garner, age 2 years.
- 18

Wherefore, the premises duly considered, your petitioners pray judgement of your honorable body admitting them and each of them and their children and wards herein named to citizenship and membership in the Creek nation, and for other proper relief.

HUBBARD, GARLAND & WATTS,  
MARCUM, FEARS & OWEN,

*Attorneys for the Above Petitioners.*

UNITED STATES OF AMERICA, }  
*Indian Territory, Northern Judicial District.* }

The petitioners above named state that the facts set forth in the above and foregoing petition are true.

ROBERT <sup>his</sup> x T. BARBER.  
mark.

MARTHA S. COKER.  
RICHARD T. POSEY.  
SUSAN L. GARNER.

JOHN <sup>his</sup> x C. BARBER.  
mark.

BEN A. BARBER.  
WALTER POSEY.  
G. W. POSEY.

19 L. E. BARBER.  
R. W. BARBER.  
R. F. BARBER.  
HARDY J. BARBER.  
JAMES M. BARBER.  
GEORGE W. STINSON.  
JESSE M. FANT.  
GEORGE A. POSEY.  
JOHN M. POSEY.  
ELIZA H. ALLEN.  
MARY J. COVEY.  
ELIZA M. BAYSINGER.  
JENNIE JOHNSON.  
WILLIAM POSEY.  
JAMES S. POSEY.  
AMBROSE P. POSEY.  
BENJAMIN B. POSEY.

Subscribed and sworn to before me this the 10 day of August, 1896.

[SEAL.]

W. J. WATTS,  
*Notary Public.*

20 & 21 At a regular term of the United States court for the northern district, Indian Territory, begun and held at the court-rooms, at Muscogee, I. T., on the 6th day of December, 1896.

On the 1st day of February, 1897, the same being one of the regular days of said term of said court—presiding, Hon. Wm. M. Springer, judge—the following proceedings, amongst others, were had, to wit:

JENNIE JOHNSON ET ALS., Appellants, }  
*vs.*  
 THE CREEK NATION, Appellee. }

It is ordered by the court that this cause be, and the same is hereby; referred to R. P. De Graffenried, Esq., special master, under rule eight relative to practice in citizenship cases.

22 In the United States Court, Northern District, Indian Territory.

JENNIE JOHNSON ET AL. }  
*vs.*  
 CREEK NATION. } Report of Special Master.

The above case having been referred to me as special master in chancery to report to your honor my findings of fact and the contention of the parties as to the law governing the case, I submit the following as my report :

This is an application for citizenship filed before the Dawes commission to be admitted and enrolled as citizens of the Creek nation.

In the original application there were 112 applicants, all claiming to derive their Creek Indian blood from the same ancestors, Benjamin Posey and Eliza Posey, *née* Berryhill, both alleged to be one-half Creek Indians by blood, and these applicants all claim to be lineal descendants of the said Posey and wife.

The commission to the five civilized tribes in passing upon the said application admitted to citizenship 62 of the said applicants and rejected 57, and these 57 have appealed from the said decision to this court.

The following-named applicants were denied citizenship by said commission, as follows : James N. Barber, for himself and his children, Sarah E. Barber, Bertie E. Barber, John S. Barber, Pearl I. Barber, Niles Barber, Mary M. Barber, and Benjamin A. Barber, for himself and his children, Mariah E. Barber, Eva A. Barber, Ida B. Barber, Edward H. Barber, Sarah E. Barber, Dora D. Barber, and Martha S. Coker, *née* Barber, for herself and her children, Silas G. Coker, James N. Coker, Robert T. Coker, Eva Coker, Maud F. Coker, & Alva L. Coker, and Benjamin B. Posey, for himself alone ; Jessie M. Fant, for himself alone ; Mary Lula Posey, for herself alone, and Nina G. Posey, for herself and child, Fred Posey ; and Ambrose B. Posey, for himself and two children, Thomas Posey and Laura E. Posey ; George W. Posey, for himself and his children, Katy Posey, Annie Posey, and Claud Posey ; Martha A. Mayfield, *née* Posey, for herself alone ; William E. Mayfield, for himself and child, Martha Mayfield ; Jennie Johnson, *née* Posey, for herself and her children, Clarence Johnson, Mary F. Johnson, Jennie D. Johnson, Walter A. Johnson ; William Posey, for himself alone ; Mollie F. Stockton, *née* Stenson, for herself and her children, Roy M. Stockton, Harry T. Stockton, Grover Cleveland Stockton ; George W. Stenson, for himself and child, Jack Stenson ; R. F. Barber, for himself alone, and R. W. Barber, for himself

alone; H. J. Barber, for himself and child, Jessie J. Barber; L. E. Barber, for himself alone; Anna Hicks, *née* Posey, for herself and her children, Ruth Hicks, Paul B. Hicks; and James M.

24 Posey, for himself alone.

The applications of these appellants, together with the 62 who were admitted to citizenship, filed their petition before the commission to the five civilized tribes, commonly known as the Dawes commission, on the 2nd day of September, 1896, to be admitted and enrolled as citizens of the Creek nation, alleging that they are Creek Indians by blood and descendants of Benjamin Posey and Eliza Posey, and that the said Eliza Posey was the daughter of — Berryhill, and that they were both Creek Indians by blood and recognized and enrolled citizens of the Creek nation.

That thereafter, on October 23rd, 1896, the Creek nation filed answer to the said application, and alleged that they have not shown by competent evidence that applicants are Creek Indians within the fourth degree, as required by the laws of the Creek nation, and deny that any of the applicants were on the roll of citizenship on the 10th day of June, 1896, and further deny that Benjamin Posey and Eliza Posey, his wife, through whom applicants claim to derive their Creek Indian blood, were ever residents or citizens of the Creek nation, and further deny that applicants are Creek Indians under the laws of the said nation.

25 Thereafter, on the 25th day of November, 1896, the said Dawes commission duly acted on said application and rendered decision adverse to the applicants, and denied said application without assigning any reason or ground upon which said decision was based, and thereafter these appellants whose applications was denied filed in this court their petition on the 16th day of December, 1896, alleging that these appellants are Creek Indians by blood, and entitled to be admitted and enrolled as such, and further allege that the evidence submitted to the said Dawes commission fully and conclusively established the fact that these appellants are Creek Indians by blood and entitled to citizenship in the said nation, and that the said decision of the Dawes commission was contrary to the evidence submitted to them and contrary to the law applicable to and governing their cause. They also assign many other errors committed by said commission which I deem unnecessary to set out here.

The Creek Nation filed answer to this petition for appeal on January 12th, 1897, denying that the evidence submitted to the Dawes commission shows that appellants are Creek Indians by blood and entitled to citizenship in the Creek nation, and denying that the Dawes commission erred in rejecting the application of these appellants.

In passing upon the evidence submitted in support of appellants' claim to Creek Indians by blood and entitled to citizenship in the Creek nation, I shall notice and take up the head of each

26 family separately, and place the children of the heads of the families together, and I find from a careful examination of the pleadings and all the evidence submitted that Benjamin Posey

was a one-half Creek Indian by blood and a duly recognized enrolled citizen of the Creek nation at the date of his death; that he was married to Eliza Berryhill, and that Eliza Berryhill was a one-half Creek Indian by blood, and that the father of the said Eliza Berryhill and the mother of Benjamin Posey were brother and sister, making the said Benjamin Posey and Eliza Berryhill first cousins; that Benjamin Posey died and was buried in the Creek nation in the year 1883, and at the time of his death, as above stated, was a recognized citizen of the Creek nation.

MARTHA A. MAYFIELD.

I find from the evidence that Martha A. Mayfield, one of these appellants, is the daughter of Benjamin Posey and Eliza Posey, who were one-half Creek Indians by blood, thus making the said Martha Mayfield a one-half Creek Indian by blood; that she is not a resident of the Indian Territory and in fact has never resided in the Indian Territory, but is a resident of the State of Texas.

27

JAMES M. BARBER.

I find from the evidence that James M. Barber is a son of Sarah A. Barber, who was a daughter of Benjamin Posey and Eliza Posey, thus making the said Sarah A. Barber a one-half Creek Indian by blood, and that the said James M. Barber, the son of the said Sarah A. Barber, is a one fourth Creek Indian by blood.

In 1883 Benjamin Posey had his children duly enrolled as Creek citizens (that is, those who were then living in the Creek nation), but at that time Sarah A. Barber, his daughter, was dead, and hence was not enrolled as a citizen. She died in Texas, and her children were, at the time of the said enrollment, in 1883, in the State of Texas, and for this reason they were not enrolled as citizens by the Creek authorities. Said enrollment was made before the judge of the district court, of which H. C. Reed was then the duly acting judge.

The evidence shows that Sarah Posey was married to Silas H. Barber, a white man, and that there were born to them the following-named appellants in this case: James M. Barber, Ben. A. Barber, Mrs. M. S. Coker, *née* Barber, and that they are all one-fourth Creek Indians by blood.

I find that the said James M. Barber was born in the State  
28 of Texas and came to the Creek nation in the year 1890, where he has since resided and made his home; that the appellant James H. Barber and his children made application to the Creek council to be admitted and enrolled as citizens of the Creek nation in 1890, and that this application was referred by the council to a committee duly appointed for the purpose of investigating the claim of applicants to the rights of citizenship in the Creek nation; that said committee, after hearing all the evidence in support of appellants' claim to be Creek Indians by blood and descendants of Benjamin Posey and Eliza Posey, reported favorably upon said application and recommended the passage of an act to

enroll them as citizens by blood. Upon this recommendation the upper house, or house of kings, of the Creek council passed an act recognizing James M. Barber and his children as citizens of the Creek nation by blood. This bill was then sent to the lower house, or house of warriors, where it was tied up and had never been acted upon; that after this L. C. Perryman, principal chief of the Creek nation, being convinced the applicants were Creek Indians by blood and entitled to citizenship in the Creek nation, instructed the said James M. Barber that he could proceed to improve a farm as a citizen of the Creek nation, and instructed Joseph Mingo, who was then the town chief of Broken Arrow town, to permit the said James M. Barber to vote in the general Creek elections, which he did; that

29 the said James H. Barber and his said children were duly enrolled as citizens of the Creek nation by the town king of Broken Arrow town, and from that time on they were recognized as citizens of the Creek nation until the year 1895, when their names were stricken from the rolls of citizenship by the citizenship commission of the Creek nation, without notice to these appellants.

I further find that James M. Barber is a brother to Robert T. Barber and John C. Barber, who are recognized and enrolled citizens of the Creek nation, having been declared citizens by blood by act of the Creek council on the 30th day of October, 1889.

I find that the said James M. Barber is the father of the following living children born to him in lawful wedlock and are now living with him in the Creek nation: Sarah E. Barber, Bertie E. Barber, John S. Barber, Pearl I. Barber, Niles Barber, and Mary M. Barber, and that the said children and one-eighth Creek Indians by blood.

#### BENJAMIN A. BARBER.

As above stated, I find from the evidence that Benjamin A. Barber is a son of Sarah A. Barber and a full brother of James M. Barber, and that the evidence submitted in support of his being a Creek Indian by blood and his right to citizenship in the Creek nation is the same as in the case of James M. Barber, and that the said Benjamin A. Barber is a one-fourth Creek Indian by blood, and

30 that he resides in the Creek nation, Indian Territory; that he and his children were admitted and enrolled as citizens of the Creek nation, in Broken Arrow town, and were from then on recognized as citizens of the Creek nation until in 1895, when they were stricken from the rolls by the citizenship commission of the Creek nation.

I find that he is the father of the following living children born to him in lawful wedlock: Maria E. Barber, Eva A. Barber, Ida B. Barber, Edward H. Barber, Sarah E. Barber, Dora D. Barber, and that all of the said children are one-eighth Creek Indians by blood.

#### MARTHA A. COKER.

As above stated, I find that Martha S. Coker is the daughter of Sarah A. Barber, *née* Posey, and is a sister of James M. Barber and Benjamin A. Barber, and that she is a one-fourth Creek Indian by



blood; that the evidence in her case in support of being a Creek Indian is exactly the same as that offered to support the claims of James M. Barber and Benjamin A. Barber.

I further find that in addition to the evidence of the said James M. Barber and Benjamin A. Barber that the said Martha S. Coker drew her distributive share of the money from the United States Government as a Creek Indian in the payment of February, 1891, and known as the Oklahoma payment; that she was enrolled as a citizen of the Creek nation upon the census roll of Broken Arrow town and was recognized as a citizen until 1895, when she was  
31 stricken from the roll, together with her children, by the citizenship commission of the Creek nation; that she is the mother of the following living children born to her in lawful wedlock: Silas B. Coker, James M. Coker, Robert T. Coker, Eva Coker, Maud F. Coker, and Alva L. Coker, and that the said children are one-eighth Creek Indians by blood, and that they reside with their mother in the Creek nation, Indian Territory.

#### BENJAMIN B. POSEY.

I find from the evidence that Benjamin B. Posey is a son of Uriah Posey, who was a son of Benjamin Posey and Eliza Posey, thus making him a one-fourth Creek Indian by blood; that he was born in the State of Texas and moved to the Creek nation in 1891, where he has since resided and made his home; that he was also admitted to citizenship and enrolled as such on the census roll of Broken Arrow town and was recognized as a citizen from then on until in 1895, when he was stricken from the roll by the citizenship commission of the Creek nation.

#### JESSIE FANT.

I find from the evidence that Jessie Fant is a son of Mary A. Fant, who was a daughter of Sarah A. Barber, *nee* Posey, and a full sister to John C. and Robert T. Barber, making the said Mary Fant, now deceased, a one-fourth Creek Indian by blood, making the said Jessie Fant a one-eighth Creek Indian by blood; that he was born in Texas and came to the Creek nation in 1891, where he has since resided, and that he was also admitted to citizenship  
32 and enrolled as a citizen on the census roll of Broken Arrow town and was recognized as a citizen until 1895, when he was stricken from the roll by the aforesaid citizenship commission of the Creek nation.

#### MARY LULA POSEY.

I find from the evidence that Mary Lula Posey is the daughter of Uriah Posey, deceased, who was a one-half Creek Indian by blood, and that the said Mary Lula Posey is a full sister of George A. Posey, who was an applicant in this case and admitted to citizenship by the Dawes commission.

I find that Uriah Posey was the son of Benjamin Posey and Eliza Posey, making him, as stated, a one-half Creek Indian by

blood, and that Mary Lula Posey, this appellant, is a one-fourth Creek Indian by blood. She was born in the State of Texas and came to the Creek nation in 1892, where she has since resided. That she was enrolled as a Creek citizen on the census roll of Broken Arrow town by the town king, and was recognized as a citizen until in 1895, when she was stricken from the roll by the aforesaid citizenship commission of the Creek nation.

NINA G. POSEY.

I find from the evidence that Nina G. Posey is also a daughter of Uriah Posey and a full sister of George A. Posey, who, as  
33 above stated, was admitted to citizenship by the Dawes commission, and that she is a one-fourth Creek Indian by blood. She was born in Texas and located in the Indian Territory in 1892, where she has since resided. That she, also, was placed upon the census roll of Broken Arrow town by the town king thereof, and was recognized as a citizen until she was stricken from the said roll by the citizenship commission in 1895; that she is the mother of one living child, named Fred Posey, who is a one-eighth Creek Indian by blood.

AMBROSE P. POSEY.

I find from the evidence that Ambrose P. Posey is also a son of Uriah Posey and a grandson of Benjamin Posey and Eliza Posey and a full brother of George A. Posey, now a recognized citizen of the Creek nation by decision of the Dawes commission, and that the said Ambrose P. Posey is a one-fourth Creek Indian by blood; that he is the father of Laura E. Posey and Thomas Posey, who are one-eighth Creek Indians by blood; that the said Ambrose P. Posey and his children have never resided in the Indian Territory, and are now residents of the State of Texas.

G. W. POSEY.

I find from the evidence that G. W. Posey is a son of Eli Posey, who was a son of Benjamin Posey and Eliza Posey, thus  
34 making the said G. W. Posey a grandson of Benjamin Posey and Eliza Posey, and that he is a one-fourth Creek Indian by blood; that he was born in Texas and came to the Creek nation in 1886, where he has since resided and made his home; that he proved up his right to citizenship and was enrolled as such in Broken Arrow town by the town king, and was recognized as a citizen, together with his children, until in 1895, when he and his said children were stricken from the roll of said citizenship by the citizenship commission of the Creek nation.

I further find that G. W. Posey is a full brother of Mary Vance, who appears on the roll of citizenship of the Creek nation, on page 103, Compiled Laws of 1893, as Mary Vauns, and that he is therefore a one-fourth Creek Indian by blood; that he is the father of the following children, born to him in lawful wedlock: Katie Posey, Annie Posey, and Claud Posey, who are one-eighth Creek Indians by blood.

## JENNIE JOHNSON.

I find from the evidence that Jennie Johnson is a daughter of Eli Posey, who was a son of Benjamin Posey and Eliza Posey, and that she is a full sister of G. W. Posey and Mary Vance, and that she is therefore a one-fourth Creek Indian by blood; that she came to the Creek nation in 1886, where she has since made her home.

35 I further find that she was enrolled as a citizen of the Creek nation, in Broken Arrow town, by the town king, and holds a certificate of citizenship, issued by L. C. Perryman, principal chief, some time during the '90's (the papers are torn, and I cannot make out the date).

I also find that she was recognized as a citizen, and drew money with the Indians as a Creek Indian from the United States Government in 1891, in what was known as the Oklahoma payment; that she was also, together with her children, stricken from the rolls in 1895 by the citizenship commission of the Creek nation.

I find that she is the mother of the following children, born to her in lawful wedlock: Clarence Johnson, Mary F. Johnson, Jennie D. Johnson, and Walter A. Johnson.

## WILLIAM POSEY.

I find from the evidence that William Posey is a son of Eli Posey and the full brother of the last three applicants named, making a grandson of Benjamin Posey and Eliza Posey, and that he is a one-fourth Creek Indian by blood, and that he was enrolled as a citizen and recognized as a Creek Indian in Broken Arrow town by the town king until in 1895, when he was stricken from the roll of citizenship of the Creek nation.

36

## MOLLIE F. STOCKTON.

I find from the evidence that Mollie F. Stockton is the daughter of Tinsey E. Stinson, who was a daughter of Benjamin Posey and Eliza Posey, thus making the said Mollie F. Stockton a one-fourth Creek Indian by blood. She was born in Texas, and came to the Creek nation in 1891, where she has since resided.

I further find that she was enrolled as a citizen of the Creek nation in Broken Arrow town by the town king, and was recognized as a citizen until 1895, at which time she was stricken from the roll of citizenship by the citizenship commission of the Creek nation.

I find that she is the mother of the following children, born in lawful wedlock: Roy M. Stockton, Harry T. Stockton, and Grover Cleveland Stockton.

## GEORGE W. STENSON.

I find from the evidence that George W. Stenson is a son of Tensie E. Stinson, who was a daughter of Benjamin Posey and Eliza Posey, and that the said George W. Stenson is a one-fourth Creek Indian by blood.

I further find that he has never been a citizen of the Creek nation, but lived in the State of Texas. <sup>resident</sup>

R. F. BARBER and R. W. BARBER.

I find from the evidence that R. T. Barber and R. W. Barber are twin brothers and unmarried, and are the sons of Tinsie Barber, formerly Mrs. Tensie E. Stinson, who was a daughter of Benjamin Posey and Eliza Posey, and that they are therefore one-fourth Creek Indians by blood.

I further find that they were enrolled as citizens of the Creek nation on the census roll of Broken Arrow town, and drew money from the United States Government as Creek Indians in the Oklahoma payment, and were recognized as citizens until the year 1895, when they were stricken from the rolls by the citizenship commission of the Creek nation.

H. J. BARBER.

I find from the evidence that H. J. Barber is also a son of Tensie E. Barber, formerly Mrs. Stenson; that he is also a grandson of Benjamin Posey and Eliza Posey, and is a one-fourth Creek Indian by blood; that he was enrolled as a citizen of the Creek nation on the census roll of Broken Arrow town by the town king, and was recognized as a citizen until during the year 1895, when he was stricken from the roll by the citizenship commission of the Creek nation. I find that he is the father of one child, Jessie J. Barber, who was born in lawful wedlock and is one-eighth Creek Indian by blood.

L. E. BARBER.

I find that L. E. Barber is also a son of Tensie E. Barber, formerly Mrs. Stenson, and a grandson of Benjamin Posey and Eliza Posey, and is therefore a one-fourth Creek Indian by blood, and that he was also enrolled as a citizen of Broken Arrow town and was recognized as a citizen until in 1895, when he was stricken from the roll by the citizenship commission of the Creek nation.

ANNA HICKS.

I find from the evidence that Anna Hicks is a daughter of James Posey, who was a son of Benjamin Posey and Eliza Posey, and that the said Anna Hicks is therefore a one-fourth Creek Indian by blood.

That she is the mother of two children, to wit, Ruth Hicks and Paul P. Hicks, who are one-eighth Creek Indians by blood.

I further find that the said Anna Hicks and her said two children have never resided in the Indian Territory, but lived in the State of Texas.

JAMES M. POSEY.

I find from the evidence that James M. Posey is a son of James Posey, who was a son of Benjamin Posey and Eliza Posey, and that he is therefore a one-fourth Creek Indian by blood.

I further find that he has never resided in the Indian Territory, but resides in the State of Texas.

WILLIAM MAYFIELD.

I find from the evidence that William Mayfield is a son of Martha A. Mayfield, who is mentioned in the above report, and that the said Martha A. Mayfield was the daughter of Benjamin Posey and Eliza Posey, making this appellant, William Mayfield, a grandson of the said Benjamin Posey and Eliza Posey, and he is therefore a one-fourth Creek Indian by blood.

I further find that this appellant has never resided in the Indian Territory, but is a resident of the State of Texas.

I respectfully ask that your honor allow me a reasonable fee for my services as special master in this case.

Respectfully submitted.

R. P. DE GRAFFENRIED,  
*Special Master.*

My fee paid.

40 In the United States Court for the Indian Territory, Northern District, at Muscogee.

JENNIE JOHNSON and Her Children, CLARENCE, MARY F., Jennie D., and Walter A. Johnson, Appellants,	} No. 56.
vs. THE CREEK NATION, Appellee.	

Martha A. Mayfield *et al.*  
James A. Barber *et al.*  
Benjamin A. Barber *et al.*  
Martha S. Coker *et al.*  
Benjamin B. Posey *et al.*  
Jesse Fant.  
Mary Lula Posey *et al.*  
Nina G. Posey *et al.*  
Ambrose P. Posey *et al.*  
G. W. Posey *et al.*  
William Posey *et al.*  
Mollie C. Stockton *et al.*  
Geo. W. Stenson *et al.*  
R. F. & R. W. Barber.  
H. J. Barber *et al.*  
L. E. Barber *et al.*  
Anna Hicks *et al.*  
James H. Posey *et al.*  
William Mayfield *et al.*

Rejected by Dawes commission, —  
appeal, but are — included in the  
master's report.

41 Comes the appellee, The Creek Nation, by attorney, Ben T. Du Val, and says that the report of R. P. De Graffenried, Esq., special master in this case, ought to be set aside and held for naught for the errors hereinafter set forth:

1st. It does not appear that the said De Graffenried took the oath as special master, as required by the statute in such cases made and provided.

2nd. Because the court had no authority to refer this case to a special master.

3rd. The said special master did not comply with the law prescribing his duty in such cases, nor the order of this court, in this, that he reports his conclusions as facts instead of giving the facts themselves and referring to the affidavits of the witnesses upon whose testimony he finds the facts; and, further, he does not, in making such findings, refer the court or the counsel for the appellee to the page of the transcript, which contains 88 pages (in copy furnished the appellee), embracing about fifty affidavits and a large number of certificates and transcripts, thereby rendering the report in this instance of no assistance to the court or counsel in the ascertainment of the facts in this case, as shown by record evidence and the affidavits of witnesses.

4th. The master also erred in finding and reporting that all of these whose application was denied by the Dawes commission filed in this court their petition for appeal on the 16th day of December, 1896, because, in fact, no such petition to this court was ever  
42 presented or filed, whereas the fact is, as appears by the records of this court, that the only petition which was filed for appeal from the decision of the Dawes commission was filed by Jennie Johnson for herself and family only. Said petition is entitled "*Jennie Johnson et al., appellants, vs. The Creek Nation, appellee.*" The petition contains the following paragraph: "The facts relied upon by the appellants to establish their rights in the Creek nation, as aforesaid, are as follows, to wit: The affidavits of Mary E. Vance, Joe Mingo, Eliza Allen, Joe Allen, Thomas Barber, and John Barber," whose affidavits were produced before the Dawes commission to establish the citizenship of the said Jennie Johnson, but makes no reference to the great mass of testimony which was taken and filed before the Dawes commission in support of the other rejected applicants; and as a further evidence that the appeal was intended to embrace only Jennie Johnson and her family, attention is called to the following affidavit, verifying said petition for appeal:

"Hugh Johnson, being duly sworn, states that he is the husband and agent of the above-named Jennie Johnson, and that the facts set forth in the foregoing petition are true, as he verily believes."

(Signed)

"H. R. JOHNSON."

"Subscribed and sworn to before me this 17th day of Dec., 1896."

(Signed)

"JAS. A. WINSTON, Clerk."

43 The master ought not to have found and reported to this court that the appeal was taken by any other than Jennie Johnson and her immediate family, and his statement quoted



above, showing that all of those whose application for citizenship had been denied by the Dawes commission had filed in this court their petition for appeal on the 16th day of December, 1896, is not sustained by the facts, and it was error for him to consider and report any fact in regard to the citizenship of *the* any of the parties except Jennie Johnson, who was the only appellant, and all other names, except hers and her families, should be stricken out of the report.

5th. The master erred in finding that James M. Barber and his children were recognized as citizens of the Creek nation by virtue of his enrollment by H. C. Reed, judge of the district court, and by Joe Mingo, king of the Broken Arrow town, because it appears that his right to citizenship had been denied by the council of the Muscogee nation, which was the only authority which could admit them to citizenship, because it also appears that the names of the said James M. Barber and his family were stricken from the rolls by the citizenship commission, which had the power conferred upon it to strike the names of non-citizens from the rolls.

See act creating citizenship commission, approved May 30th, 1895.

6th. The master erred in finding that Benjamin A. Barber and his children were "admitted and enrolled as citizens in Broken Arrow town and were recognized citizens of the Creek nation," because under the laws of the Creek nation enrollment by town kings conferred no right of citizenship until the enrollment was approved by the council, and he should have found from the fact of their names being stricken from the rolls by the citizenship commission in 1895 that they never had been lawfully admitted and enrolled as citizens of the Creek nation.

7th. The master erred in finding that Martha A. Coker was enrolled as a citizen of the Creek nation upon the census roll of Broken Arrow town and was recognized as a citizen until 1895, when she and her children were stricken from the rolls by the citizenship commission of the Creek nation, because such enrollment by the town king, as before stated, did not of itself make her a citizen and her name was lawfully stricken from the roll. He erred also in finding that she drew her distributive portion of the money from the United States Government as a Creek Indian in the payment of February, 1891, because it appears from the testimony that she was not a Creek Indian, and, under the laws of the Creek nation, the king and warriors of Broken Arrow town can be made to refund to the nation the amount paid to her and her children.

See sec. 293, McKellop's Digest, 101.

45 The council itself has declared that "it had become notorious that by questionable methods and practices many non-citizens had been counted as citizens and participated in the *per capita* distribution of public funds," and such persons were claiming that by such participation they had become fully recognized citizens, and the council declared that such participation does not make a person a citizen of the Muscogee nation and the authorities



of the nation shall not accept or consider that fact as evidence of citizenship.

8th. The said master erred in finding that Benjamin B. Posey, Jesse Fant, Nina G. Posey, G. W. Posey, Jennie Johnson, William Posey, Mollie Stockton, R. F. Barber, and R. W. Barber, H. J. Barber, L. E. Barber, were admitted to citizenship of the Creek nation and enrolled as such on the census roll of Broken Arrow town and were recognized as citizens for that reason until the names of themselves and their children were stricken from the rolls in 1895 by the citizenship commission, because, as before stated, under the laws and usages of the Creek nation, enrollment by the town king conferred no right of citizenship until it was approved by the council, and the fact that their names were stricken from the rolls by the citizenship commission shows conclusively that they were not lawfully enrolled and not recognized as citizens of the Creek nation, and, as we have already seen, the fact that some of them

46 drew money in the distribution of public funds was declared by the council not to be evidence of their right to citizenship, and no doubt the wholesale enrollment of these appellants and others in Broken Arrow and other towns caused the passage of the several acts and resolutions on the subject of citizenship in May, 1895, one of which created the citizenship commission, with power to strike off the names of non-citizens.

9th. The master in his report finds that Martha Mayfield, Ambrose B. Posey, George W. Stenson, Anna Hicks, James M. Posey, and William Mayfield have never resided in the Indian Territory and are all residents of the State of Texas, and the appellee insists that they could not be citizens of the Creek nation, being citizens and residents of the State of Texas.

10th. The master erred in finding that Benjamin Posey was a half Creek Indian by blood and a duly recognized enrolled citizen of the Creek nation, and that his wife, Eliza Berryhill, was a one-half Creek Indian by blood, and the said Benjamin Posey died and was buried in the Creek nation in the year 1893, and was at the time a recognized citizen of said nation. If such was the fact the said master has failed to point out the name of the witness and the page of the transcript where said testimony can be found. On the contrary, the testimony shows that the said Benjamin Posey, the ancestor of the appellants, resided in the State of Texas  
47 nearly all of his life, and that all of his children were born and reared there, where they grew up and married and had families and remained until after the passage of the act of Oct. 26, 1889. The majority of their blood was white, and they were to all intents and purposes white persons and aliens to the Creek nation, and could only be admitted to citizenship by the council, and the master should have so found and reported.

11th. The master erred, as stated above, in treating the appeal in this case as embracing any other person than Jennie Johnson and her children, because, as already shown, she was the only party who prayed for an appeal. The appellee in the answer to the original petition stated that the plaintiffs or petitioners sought to establish their

right to citizenship by the affidavits of each other, and by uniting all in one petition hoped to draw in those who were not entitled to admission by blood or otherwise, if indeed any of them were. In this instance it is very evident upon the face of the papers that Martha A. Mayfield and her family, James A. Barber and his family, Benjamin A. Barber and family, Martha S. Coker and family, Benjamin B. Posey and family, Jesse Fant, Mary Lula Posey and her family, Nina G. Posey and her family, Ambrose P. Posey and family, G. W. Posey and family, William Posey and family, Mollie C. Stockton and family, George W. Sten-  
 48 son and family, R. F. and R. W. Barber, J. H. Barber and family, L. E. Barber and family, Anna Hicks and family, James M. Posey and family, and William Mayfield and family, have endeavored to wring into this case and obtain the benefit of an appeal taken by Jennie Johnson, and their names should be stricken out of the said master's report.

For the above and many other manifest errors in the said master's report the same should be stricken out, and the said pretended findings be totally disregarded, and the court should examine the papers thoroughly, because it is evident that this case from beginning to end is a conspiracy to obtain citizenship by fraud and misrepresentation.

Respectfully submitted.

BEN T. DU VAL,  
*Attorney for Creek Nation.*

Dictated to F.

49 . In the United States Court for the Northern District of the Indian Territory, Sitting at Muscogee.

JENNIE JOHNSON ET ALS.	} Sp. Master's Findings on Bill — Exceptions.
vs.	
THE CREEK NATION.	

In the above cause the Creek Nation files eleven exceptions to the master's report, and I have carefully examined each of said exceptions and submit this by report upon same. I shall only notice those exceptions which upon their face seem to have some merit.

Exception No. 3 is to the effect that the report does not quote from the evidence. As stated by the counsel for the Nation, the record in this case is very voluminous, with large numbers of affidavits and other evidence submitted, and to have quoted the evidence of each witness would make a report too burdensome for the court to read. I carefully considered all the evidence and my report shows my conclusions from all the evidence, and I therefore recommend that said exception be overruled.

The 4th exception is that no appeal is taken in this case by any other of the applicants except Jennie Johnson and her family. It is true the petition for appeal simply states "Jennie Johnson *et al.*," but does not the word- "*et al.*" include all rejected claimants besides Jennie Johnson? I so considered it in my report.

50 And, in addition to this, Thomas Marcum, one of the attorneys for the appellants, filed before me an affidavit and states that the original petition in this case contained over one hundred petitioners, all of whom made joint application and the whole of said petitioners were joined in one case at the instance and upon the suggestion of one of the members of the Dawes commission, and that there has never been any objection or exception to the joining of said applicants, and the style of the case herein before said commission was Thomas B. Posey *et als.*, but the said commission, by its judgement entered in said cause, admitted about one-half of said petitioners to citizenship; that the first name of the said original docket of said commission, Thomas B. Posey, was admitted to citizenship, and the judgement of said commission admitting said applicants was not appealed from by the Nation. They therefore, upon appeal to this court, were compelled to change the style of the case from Thomas B. Posey *et al.*, who was admitted to citizenship and who did not appeal, and substituted therefor one of the names of the rejected claimants, and the name of Jennie Johnson was adopted as the first name, with the words *et al.*

Said affidavit further states that said appeal was taken not only by Jennie Johnson, but by all the claimants in said petition  
51 who were not admitted to citizenship before said Dawes commission.

I think the objection is more technical than just, and as there has been great latitude allowed in these cases by which justice and right might prevail, I do not think that this exception should be considered by the court. The other exceptions I do not think should be considered, as my report fully explains how and where the applicants were enrolled upon the Creek census rolls.

I therefore respectfully recommend that the exceptions to the report be overruled.

R. P. DE GRAFFENRIED,  
*Special Master in Chancery.*

52 On the 15th day of April, 1898, there was filed in the office of the clerk of said court the report of the special master, N. A. Gibson, in said cause; which is in word- and figures as follows, to wit:

In the United States Court in the Indian Territory, Northern District, at Muscogee.

JENNIE JOHNSON ET AL.	} No. 56. Report of Special Master.
vs.	
THE CREEK NATION.	

I, N. A. Gibson, special master herein, respectfully show to the court that in accordance with the order of reference herein to me made by the court on the 22nd day of December, 1897, in which I was ordered to take testimony and report as to the time the applicants came to the Creek nation, what effort each made to be enrolled as citizens, and when and by whom they were enrolled, and when and

by whom they were decitizenized, if at all, and how long and by what authority each was ever recognized as a citizen of the Creek nation, I have taken the testimony as ordered and herewith file the same and make it a part of my report, and that upon an examination of the same I find as follows:

## I.

That this application was made by James M. Barber, for himself and his children, Sarah E., Bettie E., John S., Pearl I., Niles, Mary

53 M. Barber; by Benjamin A. Barber, for himself and for his children, Maria E., Eva, Ida B., Edward H., Sarah E., and Dora D. Barber; by Martha S. Coker, *née* Barber, for herself and for her children, Silas G., James N., Robert T., Eva, Maude F., and Alva L. Coker; by Benjamin B. Posey, for himself; by Jesse M. Fant, for himself; by Mary Lula Posey, for herself; by Nina G. Posey, for herself and her child, Fred Posey; by Ambrose B. Posey, for himself and his children, Thomas and Laura E. Posey; by George W. Posey, for himself and his children, Katie, Annie, and Claud Posey; by Martha A. Mayfield, *née* Posey, for herself; by William E. Mayfield, for himself and his child, Martha Mayfield; by Jennie Johnson, *née* Posey, for herself and her children, Clarence, Mary F., Jennie D., and Walter A. Johnson; by William Posey, for himself; by Mollie F. Stockton, *née* Stenson, for herself and her children, Roy M., Harry T., and Grover Cleveland Stockton; by George W. Stenson, for himself and for his child, Jack Stenson; by R. F. Barber, for himself; by R. W. Barber, for himself; by H. J. Barber, for himself and his child, Jessie Barber; by L. E. Barber, for himself; by Anna Hicks, *née* Posey, for herself and for her children, Ruth and Paul B. Hicks, and by James M. Posey, for himself alone.

That the proof shows that Martha A. Mayfield, Ambrose B. Posey and his children, George W. Stenson and child, Anna Hicks and children, James M. Posey, and William Mayfield and his child, Martha Mayfield, all reside in the State of Texas and have never  
54 resided in the Creek nation, and that the facts hereinafter found do not apply to these claimants except as to their being of Creek blood, they having never been enrolled or recognized as citizens of the Creek nation.

That all the remaining claimants reside in the Creek nation, where they have *raised* since before the year 1890, James M. Barber being the last one who located permanently in said nation, and that all the findings in this report apply to all of them alike.

That the proof shows that the claimants in this case are the lineal descendants of Benjamin Posey and his wife, Elizabeth Posey, *née* Berryhill, both of whom were born in the Creek nation and were Creek Indians by blood and first cousins.

That there has always been a law among the Creeks from time immemorial against the intermarriage of first cousins, and that a great many years ago Benjamin Posey having married his first cousin, Elizabeth Berryhill, they left the Creek nation and moved to the State of Texas to avoid the penalty for having violated the

laws of the Creek nation in this respect; that they continued to live in the State of Texas until the year 1882, at which time they returned to the Creek nation, where they lived the remainder of their lives.

That most of the claimants herein were born in the State of Texas and made their homes there, but it appears that they always regarded the Creek nation as their actual home, and that some  
55 members of the family were in the habit of visiting the Creek nation every year, and that, as is stated in the testimony of Joseph Mingo taken by me on page 7, "they have never been regarded as lost people."

That these claimants continued to return to the Creek — until the year 1890, at which time James Barber and his immediate family came back, they seeming to have been the last to return to make this nation their permanent home, his full brothers, John C. and Robert T. Barber, having been admitted to citizenship in the Creek nation on October 30, 1889, by act of council.

That the said James Barber had lived in the Creek nation as early as the year 1872 and had afterwards gone back to Texas.

## II.

That after the claimants came back to the nation they began to exercise all the rights of citizenship in the nation, and began to improve farms and make pastures, and continued to live in said nation without opposition until the year 1893, when the proof shows that some of the claimants began to make farms in certain pastures held by other citizens of the nation, E. B. Childers among others, and these parties applied to L. C. Perryman, the principal chief of the nation, to have the claimants removed from the farms and nation as intruders.

That after the said application was made to the chief he instructed Napoleon B. Childers, the judge of Coweta district, Creek nation, to order the claimants to come before him and prove up their rights to remain in the Creek nation as citizens.

56 That, in accordance with the said order, Judge Childers, on the 6th day of June (see Exhibit B to J. M. Barber's testimony), notified the claimants to come before him on the 13th of June, 1893, and establish their rights to live in the Muscogee nation, and that on the said day the claimants appeared before the said judge, at the court-house in said district, with their witnesses and made proof of their Creek blood and of their rights to citizenship in the Creek nation to the full satisfaction of Judge Childers. (See testimony and decision at the end of the testimony.)

That the claimants were thus admitted to full citizenship in the Creek nation.

## III.

That the act of the Creek council under which Judge Childers and Chief Perryman acted in this investigation of the rights of these claimants appears on page 63 of Perryman's Compilation of the Creek Laws, 1890.

## IV.

That the claimants herein continued to exercise all the rights of citizens in the Muscogee nation, both political and property, from that time until the year 1895.

## V.

57 That by an act approved on January 31, 1895, the Creek council authorized the principal chief to instruct the members of the council to take correct census of the citizens and members of their respective towns.

That this roll was made in anticipation of a *per capita* payment to be made.

That as soon as the town kings made up the said rolls of their towns copies were to be submitted to the house of kings and warriors, and the chief was instructed to call the council in extra session to compare the copies and correct the same for the purpose of making payment.

That rolls were made up by the various town kings in accordance with this act and the general law and custom of the Creek nation from time immemorial, and that during the extra session of council in May, 1895, an act was approved on May 15th, under which a committee composed of six members of the house of kings and twelve members of the house of warriors was appointed to take charge of the town rolls and examine the same, and if the names of any non-citizens appeared thereon to expunge the same and report their action to the council.

That by an act approved May 17, 1895, this committee of eighteen were instructed and directed to entertain and consider any and all challenges and questions urged in good faith by any respectable citizen against the claim of any person to citizenship in the nation and strike from the rolls and preserve a correct list of all the names so stricken out and report the same to the council.

58 That the only report ever made by the said committee appears to have been made on June 8, 1895, and shows the number of citizens to be 13,841, and "the number enrolled *enrolled* which were stricken from the rolls by the committee as doubtful is 619."

That no names were given in the said report, and that there was no means by which the parties whose names had been stricken from the town rolls could find out that they had been stricken off unless some friend informed them.

## VI.

That the proof taken by me in regard to the actions and proceedings of this committee of eighteen discloses a condition of affairs that is startling on account of the corruption and folly indicated by the actions of the various members of the committee.

It appears that the sessions of the committee were held informally, and that any visitor was at liberty to come in, and if he heard a name called that did not please him he was at liberty to get up



and say that he objected to that man, and the name was forthwith stricken off.

The proof shows that a number of the members of the committee had some trouble or dispute, and one man would get up and object to the names of a large number of the members of another man's town; this, of course, would make the member from the afflicted town mad, and he would get even by jumping up and object-  
 59 ing to a still larger number of names on the roll — his opponent's town.

That there was no reason whatsoever for the actions of the committee, and that parties were stricken off the rolls who had lived in the Creek nation all their lives and were full-blood Creek Indians, whose citizenship could not be disputed by any one.

That the proof shows that the claimants herein were all enrolled upon the town rolls of their town, and that they were stricken off at the instance of Ellis Childers, who states in his testimony that he had no reason for his action except that he wanted revenge, because certain of the members of his own town had been stricken off the rolls.

That the action of the committee was ridiculous and childish, and that I am of the opinion that no respect should be shown to their decisions.

That it appears that no proof whatever was called for when a name was objected to, and that the presiding officer ruled that he had no discretion and was forced to strike off any name to which objection was made, though he and all the committee might well know that the person objected to had always been a citizen.

That the persons objected to were not allowed to be present and defend themselves, and that no notice was sent them of their having been stricken from the rolls.

That the claimants herein were never officially notified that  
 60 they had been taken off the rolls, and only learned of it from some friend who was present.

That they immediately began to endeavor to get back on the rolls and made application to the citizenship commission appointed under the act approved May 30, 1895, and filed their bond for costs with Joseph Mingo as surety, but that they were never able to get a hearing before said commission, though N. B. Childers swears that he was twice summoned to Okmulgee as a witness in their case, and that the case was never even called for trial.

That Ellis Childers, the man who had them stricken off the rolls, testifies that they were always regard- as citizens of the nation, both before and after the time their names were taken off the rolls, and that the proof shows that J. M. Barber has been acting as deputy or assistant to Upter Bird, the prosecuting attorney of Coweta district, since the 19th day of January, 1897.

The premises considered, I find that the claimants are Creek Indians by blood; that their grandparents were both citizens of the Creek nation by blood, and that the claimants and their parents have never so far seaprated themselves from the Creek nation as to lose their citizenship therein.



That they have all returned to the Creek nation at various times before the year 1890, and have all been recognized as citizens of the nation by proper authorities.

That they were all on the authenticated rolls of the Creek nation in the year 1895, and that they were unlawfully stricken  
61 from said rolls by the eighteen committee, and have never been given an opportunity to prove their rights to be restored to said rolls.

That if the names of the claimants had not been stricken off by the eighteen committee in the manner shown above these claimants would now be on the authenticated rolls of the Creek nation.

That the action of the said committee of eighteen was not founded upon any fact and was made without regard to the actual rights of the claimants and by a man who knew that they were lawful citizens of the Creek nation.

I respectfully ask that the court allow me a reasonable fee for my services herein.

Respectfully submitted this 4 day of April, 1898.

My fee paid.

N. A. GIBSON,  
*Special Master.*

62 In the United States Court for the Indian Territory, Northern District, at Muskogee.

JENNIE JOHNSON ET AL., Appellants, }  
vs. } No. 56.  
THE CREEK NATION, Appellee. }

Comes the said appellee, by attorney, Ben T. Duval, and excepts to the report of the said special master as follows:

First. In finding that the appellants were "admitted to full citizenship in the Creek nation" the said master erred.

The act of the Creek council under which Judge Childers and Chief Perryman acted in said pretended investigation published upon page 63, Perryman's Compilation of the Creek Laws, in 1890, were repealed by act of council approved November 29th, 1883, creating a permanent citizenship committee, which act is also published on page 125 of same digest.

Second. The master erred in not finding and reporting that the "claimants were thus not admitted to full citizenship in the Creek nation, because the pretended investigation and judgment of Judge N. B. Childers was *coram non judice*."

Third. The said master erred in finding and reporting "that the claimants and their parents have never so far separated themselves from the Creek nation as to lose citizenship therein." The  
63 master also finds that the claimants were born in the State of Texas, and some of them remained there until after the passage of the act of October 26th, 1889, usually called the alien act; some — them came before, and it was his duty to report the names of those who come to the Creek nation after the passage of

said act." He should have found and reported that, having been born outside of the limits of the Creek nation, they could not lawfully become citizens until admitted by the council or some tribunal having jurisdiction lawfully conferred upon it by act of council, and he should have found that they had never been admitted by act of council or any tribunal having jurisdiction.

Fourth. The master erred in finding that the said claimants were all enrolled on the town roll, there being no legal and competent testimony before him upon which to base such findings. The town roll nor a copy of the same containing their names was produced, and no foundation was laid for the introduction of secondary evidence.

Fifth. The master erred in censuring the action of the eighteen committee in this language: "The actions and proceedings of the committee discloses a condition of affairs that is startling on account of the corruption and folly indicated by the action of the various members of the committee;" and also, "That parties were stricken off the rolls who had lived in the Creek nation all their lives and were full-blood Creek Indians, whose citizenship could not be disputed by any one." This court has decided that it will not

64 reverse the judgments of the tribunals of the Creek nation in matters within their jurisdiction. It is improper to cast reflections upon the conduct of this committee in the discharge of duties conferred upon it by acts of council referred to in said report upon *ex parte* testimony produced by interested parties in a collateral proceeding.

Sixth. The master erred in finding "that the claimants were all on the authenticated rolls of the Creek nation in the year 1895, and that they were unlawfully stricken from said rolls by the eighteen committee." The testimony taken by him shows that they never were lawfully on any rolls, and the town rolls they pretended to have been on were not authenticated.

The committee of eighteen was created "to take charge of the census rolls of the various towns and carefully examine same and ascertain whether they are correct" and to expunge the names of non-citizens from the rolls reported separately to the council, and all the acts of the committee to be subject to the approval of the national council.

See act approved May 15th, 1895.

These are the rolls the claimants allege from which their names were unlawfully erased.

The committee did report June 8th, 1895, and on same day the national council passed an act approving said report and required and instructed the towns to base the next general election in September, 1895, for members of the national council upon the number of citizens as shown by the census reported by the committee of eighteen and continue the same until some further enumeration should necessitate a different apportionment. The act apportions the kings and warriors according to the several towns therein mentioned.

See act approved June 8th, 1895, page- 12, 13, and 14, Pamphlet Acts of 1895.

These rolls as corrected by the committee of eighteen were recognized and approved by resolution approved December 4, 1895.

See same acts, page 18.

Seventh. The master erred in not finding that the names of the claimants were lawfully erased by the committee of eighteen, whose report was adopted and approved by the national council, and that their claims were not established by competent testimony, and that they never were on any authenticated roll at any time, and the testimony shows that they were not on any roll whatever on June 10th, 1896.

BEN T. DU VAL,  
*Attorney for the Creek Nation.*

66 JENNIE JOHN- ET AL. } # 56. Answer to Exceptions of Ap-  
vs. } pellee.  
THE CREEK NATION. }

In reply to the exceptions filed herein by the attorney for the appellee, I, the undersigned, special master herein, respectfully report to the court that after a careful examination of the exceptions and the testimony upon which my original report was based I can make no change in said report, as desired by the exceptions.

In regard to the third exceptions of appellee, I will state that the testimony failed to disclose the time the claimants came to the Creek nation, but it does show that nearly all of them, with the exception of J. M. Barber alone, I think, came to the said nation to reside before 1889, and that said J. M. Barber had been in the nation many times before with various relatives.

Respectfully submitted this 4th day of April, 1898.

N. A. GIBSON,  
*Special Master.*

(Endorsed as follows:) Filed Apr. 15, 1898. Jas. A. Winston, clerk.

67 On the 16th day of June, 1898, there was filed in open court opinion of court in said cause, which is in words and figures as follows, to wit:

In the United States Court for the Northern District of the Indian Territory, Sitting at Muscogee.

JENNIE JOHNSON ET AL. }  
vs. } No. 56.  
THE CREEK NATION. }

On the motion for rehearing.

*Statement of Facts.*

This case was twice referred to a special master. It was first referred to Mr. R. P. De Graffenried, who submitted the following report thereon:

See page 22.

To which report counsel for the Creek nation submitted exceptions, and to these exceptions the special master replied; all of which are set forth herein. Thereafter the claimants applied for leave to take additional testimony, which was granted, and on the 22nd day of December, A. D. 1897, the case was referred to Mr. N. A.

Gibson, owing to the illness of Mr. De Graffenried, with directions to take additional testimony and to make report thereon.

Mr. Gibson's report is as follows:

See page 52.

Mr. Gibson's report and exceptions thereto by the Creek nation and his reply to those exceptions are as follows:

See page- 62 and 66.

*Opinion by the Court.*

SPRINGER, Judge:

The testimony in this case is very voluminous, as appears from the reports of the special masters. There is much conflict in the testimony, which is apparently irreconcilable. There are also a large number of claimants embraced in this case, and quite a number of their cases will depend upon the legal status of the claimants in this case. This court will not attempt to recapitulate all of the evidence set forth in the reports of the special masters. Only such facts will be referred to as are necessary to an understanding of the legal propositions involved. The laws of the Creek nation in reference to citizenship are nearly all involved, more or less, in the decision of this case. Some of these acts have been commented upon in the general opinion of this court in reference to Creek

69 citizenship. In that opinion special construction was given to the act of the Creek council approved October 26, 1889, and known as the alien act. The first section of the act, being section 295 of the Compiled Laws of the Muscogee Nation, 1893, is as follows:

"All persons who were born or who may be hereafter born beyond the limits of the Indian Territory and may have heretofore been entitled to make application for, citizenship on account of Indian blood or tribal adoption, and who have continuously resided beyond or outside of the jurisdictional limits of the Muscogee nation for a period of 21 years, are hereby declared aliens and not entitled to citizenship in the Muscogee nation, or to any of the privileges thereof."

This section embraces the important features of the law known as the "Alien act." Counsel for the claimants in this case have contended with considerable force and with some plausibility of soundness that the alien act of the Creek nation is in conflict with the constitution of the nation and therefore void. Counsel have ignored the doctrine laid down by the Supreme Court of the United States in the case of *Roff vs. Burney* (168 U. S. Rep'ts, page 223). In that case the Supreme Court, referring to an act of the Chickasaw legislature which had conferred citizenship upon a citizen of the United States and to the subsequent act repealing the same,

said: "This act was not one simply taking effect as of the date of its passage and then withdrawing rights admitted to have  
70 been theretofore legally granted, but was retroactive in its scope and purported to annul and destroy all that had ever been anticipated to be done in respect to the matter." And the court further held: "It is enough to hold that all personal rights founded on the mere status created by the prior act fell when that status was destroyed."

In the Roff case citizenship had been previously conferred on the wife of Roff by an act of the Chickasaw council, and if citizenship once conferred could be withdrawn how much more reasonableness and justice is there in withholding citizenship never conferred or enjoyed? The alien act was aimed at those who were born out of the jurisdictional limits of the nation and who could not assert rights of citizenship in the nation, except by positive authority of the Creek council. Hence the Creek council may determine the basis or condition upon which such persons could be admitted to citizenship. The Creek council may have said, and it had the power to say, that persons born out of the jurisdiction of the nation and then resided out of the jurisdiction of the nation should be regarded as aliens. Claimants to citizenship who were born out of the jurisdiction of the nation cannot complain that the statute is more liberal to them than they were entitled to claim. Quoting further from the Roff case, the Supreme Court held:

"The validity of the act withdrawing citizenship from the  
71 wife of plaintiff and the consequent withdrawal from plaintiff — all of the rights and privileges of citizenship in the Chickasaw nation has been practically determined by the authorities of that nation, and that determination is not subject to correction by any direct appeal from the judgement of the Chickasaw courts."

Here is positive recognition of the right of Indian nations to control the question of citizenship in the nation, and that when the nation has exercised its authority that authority and the method pointed out by it is not subject to correction by any direct appeal from the judgement of the tribal authorities. This court therefore reiterates its former opinion to the effect that the Creek council had the authority to pass the law known as the alien act, and that the law is binding upon this court in the determination of all questions of citizenship in the nation when its provisions may be involved. Counsel have referred in their respective briefs and exceptions to an act of the Creek council printed on page 63 of Perryman's Compilation of the Laws of the Muscogee Nation, 1890. This act consists of three sections, which are as follows:

"SEC. 1. All persons having resided out of the limits of the Muscogee nation and whose rights as citizens of the same may seem to be questionable in consequence of intermarriage with non-citizens, shall be *bona fide* citizens of this nation, provided they can prove to the satisfaction of the proper authorities that they are  
72 of Muscogee descent and not further removed than the fourth degree."

Section 2 relates to adopted citizens and persons of African descent.

"SEC. 3. Any person claiming citizenship under these provisions, shall, in order to establish his or her rights, prove the same by a responsible disinterested native witness before the district court."

The date of the passage of this act is not given. It is not reproduced in McKellop's Compilation of the Laws of the Muscogee Nation, published in 1893. It was doubtless passed prior to 1871. The author of McKellop's Compilation, evidently being of the opinion that the foregoing act has been repealed by subsequent provisions, has left it out of the laws of the nation. Counsel of the Creek nation also insists that the act in Perryman's Compilation just quoted has been repealed by subsequent acts. The alien act, which was passed in 1889, is published on page 105 of McKellop's Compilation of the Laws of the Muscogee Nation.

Section three of the act, printed on page 63 of Perryman's Compilation, confers upon the district courts of the Creek nation a very indefinite jurisdiction. It says that the claimants may prove their citizenship by a responsible disinterested native witness before the district court. This is the only jurisdiction conferred upon the district court. What the district court may do after such proof has been submitted is not stated, nor is it stated what will be the

73 effect of any judgement that the district court may enter.

The claimant can merely submit his proof to the district court. No previous act had conferred upon the district court the power to admit persons to citizenship whose citizenship was disputed. This is the only act to which attention has been called on this subject or which involves in any way the district court. Unless, therefore, the district court had inherent authority to pass upon the question of citizenship and to admit persons to citizenship in the Creek nation, this section can only be construed as conferring upon the court the power to receive the proof of citizenship and report the same to any tribunal authority to confer it. This seems to be the construction which was given to the act by N. B. Childers, who, in his testimony in this case taken before the special master, Mr. Gibson, states that he received a notice from Chief Perryman to investigate the citizenship of the Barbers and the Poseys, and that after making investigation he made a report to the chief to the effect "that they had a right there as citizens." Judge Childers, in his testimony, page 2, says: "That seemed to settle the question, and they remained there as constituents of Broken Arrow town, and the town chief kept them on his rolls until they were taken off the rolls. I recognized them as citizens until

74 they were taken off the rolls." Judge Childers, however, states as follows in his testimony, page 2: "Our chiefs have always held that it was the duty of the district judges to settle the question of citizenship of persons in their districts." And further Judge Childers says: "It was the custom for a great many years for the town chief to keep a roll of the citizens of his town, and when he came to the council no question was made as to the names on the rolls. This custom was in full force until a few years ago. I cannot tell exactly how long ago. There was no change in this custom until the chiefs of the different towns began to scratch the



rolls of each other's towns. This brought on conflicts among them and the matter was taken into council, and the counsel began to legislate about it. There has been no positive law, so far as I know, repealing this custom. If there had been such a law, it would have been the duty of the principal chief to communicate it to the judges. Some hold that it is the duty of the judges to pass upon these citizenship matters, and some hold that it is not. Several years ago the question came up in the council, of which I was a member at the time, as to who should draw the payment that was to be made. Finally the committee of 18 was appointed to investigate the rolls. When this committee investigated the rolls they did not notify the parties who they were investigating. They took up the different

names, and if they thought that he should not be on the rolls  
75 the names were scratched off. I was before that committee several times. The Barbers and Poseys were scratched off at that time, also the Morgans, Wassoms, Perry, and a whole lot of others. The roll from which these parties were scratched off was the legal roll of the Creek nation."

Judge Childers' opinion that the rolls from which these names were scratched was the legal roll of the Creek nation is not binding upon this court. He was simply a witness, testifying before the special master, when his opinion was submitted. He submits another opinion in his testimony further on, as follows:

"After the decision of Judge Adams in regard to the alien law, I, with a great many others, considered that the law was of no effect because they went right straight and took in some that it had gone against."

This opinion of Judge Childers is also not binding upon this court, for he is evidently in error on the subject. Judge Adams submitted no decision on the question. The decision to which he referred was a opinion of the supreme court of the Creek nation, transmitted at the request of the citizenship commission, and that opinion does not hold that the alien law is of no effect, but, on the contrary, fully sustains its provisions.

The rolls from which the names of the claimants in this case were stricken by the committee of 18 was the roll of the citizens of  
the nation prepared by the town chiefs of the several towns  
76 of the Muscogee nation. That was merely a census roll, and was only *prima facie* evidence of citizenship in the nation. The legislation of the Creek nation is conclusive upon this point. The act creating the committee of 18, which was approved May 15, 1895, is headed in the session laws, "Committee of 18 on census rolls of 1895," and is as follows, there being but one section:

"That a special committee, to be composed of six members from the house of kings and twelve members from the house of warriors to be appointed to take charge of the census rolls of the various towns and carefully examine the same and ascertain whether or not they were correct, and if any of them are found to contain the names of non-citizens all such names shall be expunged from the rolls and reported separately to the national council."

All the acts of the special committee herein provided for shall be



subject to the approval of the national council. There was an amendment to this act, or rather a supplemental act, passed May 17, 1895. The preamble to this supplemental act is as follows :

"Whereas it has become notorious that by questionable and unjust methods and practices many non-citizens have heretofore been counted as citizens and participated in the *per capita* distribution of the public funds of the nation ;

And, whereas, such persons as have in this manner obtained a share in the payments of moneys of the nation made to her  
77 citizens, claim by such participation that they have become fully recognized citizens thereof, entitled to all the rights, privileges and immunities incident thereto, which claim if admitted, must eventuate in great injustice to *bona fide* citizens of the nation : Therefore,

Be it enacted by the national council of the Muscogee nation, That the fact alone that any person has at any time participated in the *per capita* distribution of any of the public moneys of the Muscogee nation, does not make of such person a citizen of the Muscogee nation entitled to the rights and privileges of recognized citizens thereof, and shall not by any authority of the nation be subject or construed as evidence sufficiently to perfect and establish such claims.

Be it further enacted, That the committee of eighteen (18), appointed by the act of the extraordinary session of council, approved May 13th, 1895, to examine and correct the census rolls of 1895, are hereby instructed and directed to entertain and consider any and all challenges and questions urged in good faith by any respectable citizen against the claim of any person to citizenship in this nation, and strike from the rolls and preserve a correct list of all the names so stricken out and report the same to the present session of council."

The committee of eighteen submitted a report, which is found on page 12 of the Session Laws of June, 1895, and is as follows :

*" Committee Report.*

"OKMULGEE, I. T., June 8, 1895.

78 Honorable national council, M. N.

GENTLEMEN: We, your committee of eighteen, appointed to consider and correct the census rolls of the several towns as handed in by the town chiefs, have examined and corrected the forty-seven rolls. The correct number on the rolls is 13,841. The number enrolled, which were stricken from the rolls by the committee as doubtful, is 619. Having completed the work assigned to us, we submit this report and asking that the report be adopted and the committee discharged.

Respectfully,

M. J. SMITH, *Chairman.*

MILDRED McINTOSH, *Clerk."*

Approved June 8, 1895.

This report was submitted to the national council of the Muscogee nation. It was approved by the council and is published among the laws of the nation. This roll of citizens of the nation was adopted by the council and became then and thereafter the final roll of citizens of the Muscogee nation. From the rolls theretofore existing the committee struck off the names of 619 persons. It was directed to expunge from the rolls the names of all non-citizens, and it was instructed by a supplemental act to entertain and consider any and all challenges and questions urged in good faith by any respectable citizen against the claim of any person to citizenship in the nation, and to strike from the rolls those who might be found to be non-citizens and submit a report to the council. The committee reported the names of 619 persons as stricken from the roll by the committee "as doubtful." Whether the committee passed upon these persons as citizens and whether there is any doubt about their citizenship is immaterial. Their report was confirmed, and those who were put upon the rolls by this committee were approved by the council as citizens of the nation. This roll was in existence at the time Congress legislated upon the subject, and was the final roll of citizens of the Creek nation which was confirmed by congressional legislation.

At the same session of the council of the Creek nation at which the committee of eighteen was created there was passed an act creating a citizenship commission, which act was approved May 30, 1895. The report of the committee of eighteen was approved June 8, 1895, within ten days after the passage of the act creating the citizenship commission. All persons who were therefore reported as doubtful and who were dropped from the rolls by the committee of eighteen, and the report approved by the council, were permitted, if they saw fit, to appear before the citizenship commission and prove their right to citizenship. The preamble to the act is as follows:

"Whereas, the opinion prevails throughout the country that a large number of non-citizens have been enrolled as citizens on the different census rolls that have been made from time to time in the past; and,

Whereas it is currently asserted and believed by many that a large number of claimants who have heretofore appeared before the committee of the national council on citizenship and other authorities of the nation and established or obtained recognition of their claims to citizenship in the nation, accomplished the same by the undue use of money and other fraudulent means."

From this preamble it will be seen that the council entertained grave suspicions as to the methods which had prevailed theretofore in the placing of the names upon the census rolls in the several towns of the Creek nation. "It was currently asserted and believed by many that a larger number of claimants had established or obtained recognition of their claims to citizenship by the undue use of money and other fraudulent means," and it was for the purpose of eliminating from the census rolls the names of all such persons who had been suspected of having procured citizenship by questionable means that this citizenship commission was established. The names

of the claimants in this case had all been stricken from the census rolls by the committee of 18, with the approval of the council. It was incumbent upon them therefore to appear before this commission and establish their citizenship and secure the replacing of their names, if possible, upon the rolls of those who were recognized as citizens of the nation.

81 Mr. N. A. Gibson, special master in this case, has commented with deserved severity upon the conduct of Ellis Childers, whose affidavit is found in the papers of this case. Ellis Childers was recently the treasurer of the Creek nation, but owing to alleged official misconduct he was deposed from that position, and he is now under indictment in this court, Vinita, charged with issuing fraudulent Creek warrants. At the time the committee of 18 was in session he was speaker of the house of warriors and named the members of the committee from that house. He states in his deposition that the committee was appointed to examine the rolls by reason of the fact that there was soon to be a *per capita* payment made to the members of the Creek nation. Mr. Childers' understanding of the law creating this committee of 18 is stated by him as follows:

"Every town king has to present his rolls to this committee. Then the act authorized that if any respectable citizen objected to any person on the rolls of any town that the committee should strike the names of such persons off the rolls for further investigation;" and further, "It got to be a kind of trade for a while striking off people and getting employment from them to get them back on the rolls."

82 Mr. Childers' understanding of the law is not warranted by the text of the statute creating the committee. The text has already been quoted. The committee was authorized to take charge of the census rolls of the various towns and carefully examine the same and ascertain whether or not they were correct, and if any of them were found to contain the names of non citizens all such names shall be expunged from the rolls and reported separately to the council. A supplemental act, approved May 17, 1895, instructed and directed the committee of 18 "to entertain and consider any and all challenges and questions urged in good faith by any respectable citizen against the claim of any person to citizenship."

There is no intimation in the law anywhere that every name objected to should be stricken off. Such a construction can only be accounted for on the theory advanced by Mr. Childers, that names of persons were stricken off for the purpose of getting employment from them to get them back on the rolls. He further stated that he was informed that a number of his people had been stricken from the rolls, and that it was his duty to look after the interests of his town, and that he therefore went before the committee and staid there a week. He further said that when the names of his people had been objected to and stricken off that he began to object to the names of persons on the rolls of other towns, and that he objected

83 to the Barbers and Poseys and the Coker family and the Wassom, Morgan, Perry, and a whole lot of them, and then added, "I was trying to get my revenge. The committee took my word and scratched them off. Those were the legal rolls of the Creek nation. After I done that I tried to get my people back. I did not object to those parties because I did not believe that they were citizens, but I wanted to get my people back on and tried to get a compromise, and after the king let my people back, and then I would have withdrawn my objection and let the parties get back to whom I had objected. Finally I got all my people back except the Smiths, but I had to resort to other means." What other means Mr. Childers resorted to is not stated. We are only left to draw inferences. He does state, however, that he got all his people on the rolls except the Smiths. This statement is in direct contradiction with other parts of his testimony, which were to the effect that *that* if any reliable citizen objected to a person on the rolls of any town that the committee strike the name of such person off the roll for further investigation. Several other witnesses whose testimony will be found in the case stated that when any person's name was objected to it was dropped from the rolls and reported to the council, but Mr. Childers refutes this statement by stating that he got all his people back on the rolls except the Smiths. Mr.

Childers further stated in his deposition as follows:

84 "The supreme court decided that the alien act was unconstitutional, and that the council could not pass an act depriving any person with Creek blood of their interests in the land." He then proceeds to state why the alien law was passed, and states, "I had a good deal to do with the alien law, and think I dictated it."

Mr. Childers' interpretation of the opinion of the supreme court of the Creek nation in reference to the alien law accords fully with his course as a member of the council, viz: That persons were stricken off the rolls to get employment to put them back. The opinion of the supreme court did not decide that the alien act was unconstitutional; but, on the other hand, it fully sustains the constitutionality of the law, as we have heretofore shown in the general opinion of the court in reference to Creek citizenship.

There are several other depositions in the record in which reference was made. Mr. McGilbra stated that he was a Creek Indian by blood, and that he was a member of the committee of 18. He said, "If any citizen objected to any name as being fraudulently on the roll, the committee must strike the name off." And, further, "This committee had no authority to pass upon any citizenship, and consequently they merely followed the rules that were placed before us, and put aside each and every person that any one objected to, we having no right to force the parties objecting to proof;

85 we could not do more than just scratch the names off the rolls they were on."

Several other witnesses made similar statements to this, and it seems that the committee did, after striking off names, *did* put them back again, as testified to by Ellis Childers.

Mr. N. A. Gibson, special master, in his report characterized the

proceedings of the committee of 18 as disclosing "a condition of affairs that is startling, on account of the corruption and folly enacted by the action of the various members of the committee." And further on, "that the action of the committee was ridiculous and childish, and that I am of the opinion that no respect should be shown to their decisions." He further states that the claimants in this case were never officially notified that their names had been taken off the rolls, but that they learned of it from some friend who was present. However, they made an effort to get back on the rolls, and made application to the citizenship commission appointed under the act approved May 30, 1895, but "that they were never able to get a hearing before said commission," though N. B. Childers swears that he was twice summoned to Okmulgee as a witness, but that the case was never even called for trial.

86 This court is not authorized to inquire into the motives which actuated the members of the council of the Creek nation in the passage of any legislation by that body. It is sufficient to know that the committee of 18, whose conduct is brought in question, were only authorized to report to the national council, and that all acts of the special committee of 18 "shall be subject to the approval of the national council." This committee of 18, after making up its report, submitted it to the council, and the council adopted that report, a copy of which has been already set forth in this opinion. That report was approved June 8, 1895. Council evidently considered this report. The roll made up by the committee was submitted to the council, and the council approved it. It thereupon became the final roll of citizens of the Creek nation. Those who were omitted from the rolls no longer were recognized as members of the Creek nation. It appears that the committee of 18, although it was authorized to expunge from the rolls the names of all non-citizens, it reported those whose names were stricken off as doubtful. This report was doubtless made in view of the fact that there was then in existence, created by act of May 30, 1895, a citizenship commission created for the express purpose of

87 sitting as a high court to determine and settle all cases which shall involve the question of right of citizenship of any person in the Muscogee nation. Those persons who were reported as doubtful were permitted to apply to this citizenship commission for the purpose of having their names placed upon the rolls as citizens of the nation. It seems that the claimants in this case did apply to that commission, and that it investigated their cases; but if we are to accept the statements of the witnesses in the case the citizenship commission failed to report upon these cases.

Counsel for the claimants in this case insist that the district courts of the Creek nation were clothed with authority to determine questions of citizenship and to enroll as citizens the names of those persons cited before the district courts. We have already quoted the act of the Creek nation which conferred jurisdiction upon the district courts.

Section 3 of that act is as follows:

"Any person claiming citizenship under these provisions shall, in

order to establish his or her rights, prove the same by a responsible, disinterested native witness before the district court."

While proof was to be taken for the purpose of establishing the rights of the claimants, the district court was not clothed with authority to declare them citizens, but merely to place them upon the rolls as citizens, and the names so put upon the rolls *was*

88 always subject to the final approval of the Creek council.

The Creek council never delegated to the district courts power to determine the question of citizenship and to make final decisions on the subject. All the legislation of the Creek council shows that the rolls made by the town kings and by the district judges were subject to the approval of the council. Mr. McGilbra, a Creek citizen by blood, whose testimony has already been referred to, testified as follows:

"It is a standing law and custom for each of the 47 towns through their kings to make up their rolls of their own citizens, and then these rolls are presented to the council for approval."

The record of the admission of the claimants in this case to citizenship by Judge N. B. Childers is as follows:

"After questioning the witnesses in the Barber and Posey cases, I, N. B. Childers, judge of Coweta district, rule and so decide that the claimants heretofore mentioned were citizens of the Muscogee or Creek nation and entitled to enrollment.

Witness my hand this 13th day of June, 1893, and the seal of Coweta district.

N. B. CHILDERS,  
*Judge Coweta District, M. N."*

It is stated that the docket of Judge Wesley Tiger has been mutilated, and that the forty pages of his docket, which covered citizenship cases, has been cut out *out* and destroyed. Hence we

89 are deprived of the benefit which should be derived from an inspection of his records. However, counsel for claimants insist that as the clerk of Judge Tiger's court has testified to the contents of those destroyed pages of the record that the court should accept the affidavit of the clerk in lieu of the record of the court. It is not necessary, in view of the decision which this court will make in this case, to pass upon the question as to the records of Judge Tiger, nor as to the validity and binding force of the judgement of Judge Childers in the Barber and Posey cases. The Creek council has disposed of that matter and placed it beyond the judicial determination of this court. After the opinions and decisions of Judges Tiger, Reed, and Childers had been pronounced, especially in this case, the Creek council passed an act approved Jan. 31, 1895, less than two years after Judge Childers' decision in the Posey and Barber cases, in reference to the rolls of citizens of the nation. By this act the principal chief was directed to set a day and notify the members of the council to proceed to take a correct census of the citizens and members of their respective towns.

When such census should have been taken it was to be transmitted to the council, and the chief was to call the council in extra



session for the purpose of carefully examining the rolls thoroughly and correct the same. The rolls, therefore, of the several  
90 towns, which contained the names of the claimants in this case, were to be submitted to the council, which was authorized to examine them thoroughly and correct the same, and the *per capita* payment, then about to be made, was to be made according to such corrected rolls. Here the council asserted its power to revise the rolls prepared by the town kings and did revise them. Subsequently it was learned that fraud had been practiced in securing the enrollment of persons for the purpose of participating in this payment, and then it was that the committee of 18 was given additional authority to examine these rolls and strike off the names of all persons who were found to be non-citizens. About this time the large *per capita* payment arising out of the proceeds of the sale of the Oklahoma lands was to be made, and there was, as we may well imagine, considerable anxiety on the part of claimants to have their names enrolled as citizens for the purpose of enabling them to participate in these *per capita* payments. These contentions and rivalry were attended with such corrupt practices that the national council took notice of the fact, and gave as the reason for the establishment of the citizenship commission that a large number of claimants had secured recognition of their claim to citizenship in the nation by the undue use of money and other fraudulent means. The council therefore created the committee of 18 and the citizenship commission for the purpose of requiring all doubtful  
91 claimants to prove up their right to citizenship. The claimants in this case were stricken off the rolls by the committee of 18, and the report of the committee was approved by the national council, June 8, 1895. The citizenship commission was then in session. The claimants applied to that commission, which considered their cases, but, it is stated, no action was taken by the commission. The records of the commission have not been certified to this court, and the only information as to the action of the commission is conveyed in the affidavits or depositions of witnesses.

It has always been regarded as the province of the Creek council to finally reverse and correct the rolls made up by the town kings. The records of the Creek council fully establish the fact that it has always claimed and exercised the right to finally pass upon the question of citizenship. On Nov. 29, 1883, fifteen years ago, a standing committee of two members of the house of kings and three members of the house of warriors was created, to be known as the citizenship committee. See Perryman's Laws of the Muscogee Nation, 1890, p. 125. The law creating this commission authorized it to carefully examine and determine all questions which were finally brought to its attention in reference to citizenship. It was required to report to the national council all of its actions and determinations, to be subject to its adoption or rejection.

92 This act shows what has been the uniform course of the Creek council in reference to rolls of citizenship. They are always to be subject to its adoption or rejection. The only delegation of authority to finally pass upon citizenship cases is that which was



given to the citizenship commission created by the act of May 30, 1895. In that act it was provided that "When any case shall be decided in favor of any person by the commission, the plaintiff ever after shall be a full citizen and accorded all the rights of any other citizen." It was provided in this act as follows:

"And in any enumeration hereafter to be made of the citizens of the nation any person applying for registration against whose citizenship any question may arise shall be required to trace his or her origin to the rolls of the names of citizens to be prepared under this act."

No matter, therefore, what may be the final decision of Judges Childers, Reed, and Tiger in citizenship cases.

All such decisions were made subject to the action of this citizenship commission and of the council itself. Even if the district courts had conferred citizenship upon the claimants in this case, the Creek council had the right to withdraw the citizenship which was thus conferred, unless the council had thereafter provided that the decisions of the district courts should be final and conclusive. No such declaration had ever been made, and the council has uniformly exercised the right to finally pass upon the rolls of citizenship in the nation without any reference whatever to the actions of the district courts or the town kings. If rights of citizenship

93 had therefore been exercised it was within the power of the council to withdraw those rights, and such act of the council would be retrospective in its scope and annul and destroy all that was ever attempted to be done in respect to the matter (*Roff v. Burney*, 168 U. S., 223). The validity of the act of the Creek council withdrawing citizenship from the claimants in this case and the consequent withdrawal from them all of the rights and privileges of citizenship in the Creek nation has been practically determined by the action of the Creek council, and that determination is not subject to correction by any direct appeal from the judgement of the Creek council (*Roff v. Burney*, *supra*). The claimants in this case were dropped from the roll of recognized citizens by the action of the Creek council. They were declared to be doubtful citizens and it was the duty of the citizenship commission on presentation of their claims to pass upon them.

The special master, N. A. Gibson, in his report on this case states as follows:

"That they (the claimants) immediately began to endeavor to get back on the rolls, and made application to the citizenship commission appointed under the act approved May 30, 1895, and filed their bond for costs, with Joseph Mingo as surety, but that they were never able to get a hearing before said commission, though N. B. Childers swears that he was twice summoned to Okmulgee as a witness in their case and that the case was never even called for trial."

This statement is supported by the evidence which was before the special master, and it fully illustrates the reckless manner in which the witnesses for claimants in this case testified. I have sent for and obtained the original record of the proceedings of the Creek

citizenship commission which was appointed under the act of the Creek council approved May 30, 1895. This record discloses the fact that the testimony of at least fifteen witnesses was taken in this case and kindred cases by the commission, and the testimony of each witness is recorded at length. Some of the same witnesses whose affidavits were before the special master in this case were before the commission, and their testimony was taken down and entered of record. Notwithstanding this fact, the claimants' witnesses testified before the special master that "they were never able to get a hearing before said commission." The commission made no finding of fact or decision as to the claimants, but it did pass upon and allow the claims of other persons of the same family.

If these claimants had satisfied the commission by the evidence that they were entitled to citizenship, the presumption is that their claims would have been allowed.

It seems that the claimants did not prove to the satisfaction of the Creek citizenship commission that they were entitled to citizenship in the Creek nation, nor have they proven to the satisfaction of this court that they are lawfully entitled to be enrolled as citizens of the nation.

95 There is some question as to what parties took an appeal in this case. The petition for appeal has disappeared from the papers. It was before the special master and the counsel for the Creek nation, both of which refer to it. The counsel for the Creek nation contend that only Jennie Johnson and her children took the appeal, while the special master is of the opinion that all the parties who were rejected by the United States commission who belonged to the Barber-Posey families were included in the appeal by reason of the fact that "*et al.*" were used in the petition. If that is all that is relied upon to bring the claimants into this court as appellants it does not seem sufficient. All persons who are intended to be included in the appeal should have been set forth by name in the petition for appeal, and if this was not done those whose names are not included are not to be considered as appellants. However, the court is of the opinion that, whether all the parties have joined in the appeal or not, they are not entitled to be enrolled as citizens of the Creek nation.

The judgement of the United States commission rejecting these claimants is affirmed, and their applications to be enrolled as citizens of the Creek nation is denied.

(Endorsed as follows :) Filed in open court Jun-16, 1898. Jas. A. Winston, clerk.

96 & 97 At a regular term of the United States court for the northern district, Indian Territory, held at the court-rooms, at Muscogee, Indian Territory—presiding, Hon. William M. Springer, judge of said court—on the 16th day of June, 1898, the same being one of the regular days of said term of said court, the following proceedings, amongst others, were had, to wit:

JENNIE JOHNSON ET ALS., Appellants, }  
 vs. } #56.  
 THE CREEK NATION, Appellee.

Come the above-named appellants, by their solicitors, and also comes the above-named appellee, by its solicitor, and this cause having been heretofore submitted to the court upon application for citizenship of said appellants and the answer of the appellee and the evidence for both parties on file in the case and the master's report, and the court, having been now well and sufficiently advised in the premises, doth find the issues for the appellee, The Creek Nation.

It is therefore ordered, considered, and adjudged by the court that the said appellants, Jennie Johnson, Clarence Johnson, Mary E. Johnson, Jennie B. Johnson, Walter A. Johnson, Benjamin A. Barber, Mariah E. Barber, Eva A. Barber, Ida B. Barber, Sarah E. Barber, Edward H. Barber, Dora D. Barber, James M. Barber, Sarah E. Barber, Berdie Barber, John S. Barber, Pearl I. Barber, Niles Barber, Mary E. Barber, Martha S. Coker, *née* Barber; Silas G. Coker, James M. Coker, Robert T. Coker, Eva Coker, Maude F. Coker, and Elva L. Coker, Benjamin B. Posey, Mary Lula Posey, Nina G. Posey, and Fred Posey, George W. Posey, Katie Posey, Annie Posey, and Claude Posey, Molly F. Stockton, *née* Stinson; Ray M. Stockton, Harry Stockton, Grover C. Stockton, R. F. Barber, R. W. Barber, Hardy Barber, and Jessie L. Barber, L. E. Barber and William Posey, in this cause be, and they and each of them are hereby, refused admission and enrollment as citizens of said nation, and the judgment and decision of the commission to the five civilized tribes is in all things approved and affirmed as costs of appellants, and that execution issue therefor; to which action of the court in refusing to admit and enroll the appellants and each of them as citizens of the Creek nation they and each of them at the time excepted.

98 The affidavits of Nathaniel Berryhill, James M. Barber, G. A. Posey, Joseph Mingo, Silas H. Barber, John M. Posey, R. S. Barber, D. M. Prendergast, M. A. Posey, Mrs. E. H. Allen, John C. and Robert T. Barber, and Benjamin Posey, which are in words and figures as follows, to wit:

INDIAN TERRITORY, }  
 Northern Judicial Division. }

Now, on this 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for and within the Indian Territory, Nathaniel Berryhill, who, being duly sworn, upon his oath states that he is a Creek Indian by blood and a member of that tribe, and was well acquainted with Benjamin Posey for fifty years in the State of Georgia and Alabama and also in Texas, and knew him to be the same man that left Alabama in 1846. Affiant further states that Benjamin Posey was a son of Nancy Posey, whose maiden name was Nancy Berryhill; that Nancy Posey, *née* Berryhill, was a daughter of John Berryhill, who was a half-blood Creek or Musco-

gee Indian. Affiant further states that the following-named persons were the uncles and aunts of the said Benjamin Posey: John D. Berryhill, Alexander Berryhill, Pleasant Berryhill, Patsy McGahee, *née* Berryhill; Katy Self, *née* Berryhill; Susan Self, *née* Berryhill; Betsy Berryhill, all of whom were emigrants from Georgia to the Creek or Muscogee nation about — year 1832; that the aforementioned persons are the sons and daughters of John Berryhill, who was a Creek or Muscogee Indian by blood and descent. He also states that Eliza Posey, wife of Benjamin Posey, was a daughter of Thomas Berryhill, who was a brother of the above-mentioned persons and son of John Berryhill.

99 Affiant further states that to the best of his knowledge that the said Eliza Posey was a half-blood Creek or Muscogee Indian.

Affiant further states that the following-named persons are the sons and daughters of Benjamin Posey and Eliza Posey: Sarah A. Barber, whose maiden name was Sarah A. Posey, and Thomas B. Posey, Benjamin B. Posey, Martha A. Posey, Nancy Posey, Uriah Posey, Eli Posey, Tinsley E. Barber, *née* Posey; James M. Posey, William A. J. Posey, Eliza Allen, *née* Posey, and knows them to be the lineal descendants of John Berryhill.

NATHANIEL BERRYHILL.

Sworn to and subscribed before me this 27th day of July, 1896.

W. J. WATTS,

*Notary Public.*

UNITED STATES OF AMERICA, }  
Indian Territory, Northern Judicial District. }

I, Pearl Eddleman, do solemnly swear that I copied and carefully compared the foregoing eighty-seven pages with the originals of the documents therein contained, and the said eighty-seven pages

100 above is a full, true, and correct copy of the said originals.

All the affidavits among said originals, of which copies are contained in the above eighty-seven pages of printed matter, contained the seals of the officers before whom and by whom all the said several affidavits were sworn.

PEARL EDDLEMAN.

Subscribed and sworn to before me this 26th day of August, 1896.

L. A. FEARS,

*Notary Public.*

[SEAL.]

INDIAN TERRITORY, }  
Northern Judicial Division. }

Now, on this 29th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for and within the Indian Territory, James M. Barber, who, being duly sworn, on his oath states that he is the father of the following-named children: Sarah E. Barber, Bertie E. Barber, John S. Barber, Pearl I. Barber, Niles Barber, Mary M. Barber.

Affiant states that the above-named children were upon the census roll of the Creek or Muscogee nation until the year 1895, at which time the names of myself and children were stricken from the roll, and although the affiant has applied to the council of said nation to be reinstalled upon the roll, yet the authorities of said nation have failed and refused to do so.

JAMES M. BARBER.

Sworn to and subscribed before me this 29th — July, 1896.

W. J. WATTS,

*Notary Public.*

COMMITTEE-ROOM, OKMULGEE, I. T., October 20th, 1890.

Hon. National Council.

GENTLEMEN: We, your committee, to whom was referred the application of Benj. A. Barber, Harrison E. Barber, Mariah E. Barber, Eva A. Barber, Bennie Barber, James M. Barber, Sarah E. Barber, Bertie E. Barber, John S. Barber, Pearl J. Barber, Niles Barber, M. S. Coker, Silas G. Coker, James M. Coker, Robert Coker, Eva Coker, Maud F. Coker, and Hardy J. Barber for citizenship in the Muscogee nation, have carefully considered same and would recommend to your honorable body the adoption of the following act, to wit.

Very respt.,

THOMAS KNIGHT, *Chairman.*

102

Belong to the Broken Arrow town.

Be it enacted by the National Council of the Muscogee nation, That Benj. A. Barber, Harrison E. Barber, Mariah E. Barber, Eva A. Barber, Bennie Barber, James M. Barber, Sarah E. Barber, Bertie E. Barber, John S. Barber, Pearl J. Barber, Niles Barber, Mary S. Coker, Silas G. Coker, James M. Coker, Rob't Coker, Eva Coker, Maud F. Coker, Hardy J. Barber, be and are hereby declared citizens of the Creek or Muscogee nation by reason of Indian blood.

Adopted.

WARD COACHMAN,

*Pres. H. of K.*

A. P. S., *Clk pro Tem.*

VILLAGE OF WAGONER, CREEK NATION, IND. TER'Y.

Personally appeared before me, a notary public in and for the 1st judicial dist. of the Ind. Ter'y, one G. A. Posey, an acknowledged citizen of the Creek nation, who, being duly sworn, deposeth and says that James Barber's mother was a sister of deponent's father, and that said deponent is an acknowledged citizen of the Creek nation, and believes said James M. Barber to be also a citizen of the Creek nation and entieled to all the rights and privileges of said nation.

103

G. A. POSEY.

Subscribed and sworn to before me on this the 5th day of March, 1894.

JOHN HARVISON,

*Notary Public.*

INDIAN TERRITORY, }  
 Northern Judicial Division. }

Now, on this the 28th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for the Indian Territory, Joseph Mingo, town chief of Broken Arrow town, who, being duly sworn, on his oath states that he has known James M. Barber for about six years; that on the 20th day of October, 1890, the application of James M. Barber for citizenship in the Creek nation was presented to the house of kings; that said house of kings then referred the same to the committee for investigation. The committee investigated the application and recommended the adoption of the said James M. Barber by reason of blood, and also recommended the house of kings to adopt the same.

That the house of kings did adopt the said James M. Barber by reason of blood, and then referred the application to the house of warriors for action.

104 Affiant further states that before the house of warriors could consider said application that said house of warriors adjourned and postponed action on said application until October, 1891, that being the time of the next regular meeting of the said house of warriors.

That the house of warriors have failed to take any action on said application at the October meeting in 1891, and have never done so the present time.

Affiant further states that John C. Barber and Robert T. Barber are full brothers of the said James M. Barber and are citizens of the Creek or Muscogee nation, and are so recognized as such, and enjoy all the rights and privileges as citizens of said nation.

That during the year 1891 the said James M. Barber got me to accompany him to L. C. Parryman, principal chief of the Creek or Muscogee nation; that said chief in my presence advised said James M. Barber to go ahead and open up and improve his own farm, and also advised him, Barber, to pick out his man for chief and vote for him, saying that he had a right to vote, and requested his affiant to permit him, the said James M. Barber, to vote at his own town; that was Broken Arrow town.

Affiant further states that he is a full-blood Creek Indian, and is at present town chief of Broken Arrow town; and further states that he believes that James M. Barber is a Creek Indian by blood, and is entitled to all the rights and privileges as a citizen of such nation.

JOSEPH MINGO,

105

Town Chief.

Subscribed and sworn to before me this 28th day of July, 1896.  
 W. J. WATTS,

Notary Public.

INDIAN TERRITORY, }  
 Northern Judicial Division. }

Now, on this the 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public within and for the Indian



Territory, Silas H. Barber, who, being duly sworn, upon his oath states that on December 6th, 1846, he married Sarah A. Posey, who was a daughter of Benjamin and Eliza Posey, who were recognized Creek Indians by blood and descent; that said Eliza Posey's maiden name was Eliza Berryhill. The following-named persons are the sons and daughters of the said Silas H. Barber and Sarah A. Barber, whose maiden name was Sarah A. Posey, now deceased: Male, Robert T. Barber, born December 26th, 1848, 48 years; male, Benjamin A. Barber, born August 25th, 1855, 46 years; male, James M. Barber, born Jan. 17th, 1852, 44 years; male, John C. Barber, born March 20th, 1853, 43 years; female, Martha S. Barber, born Dec. 21st, 1857, 39 years; female, Mary A. Barber, deceased, born Jan. 21st, 1867, 29 years, died leaving one child, Jesse M. Fant.

106 Affiant further states that the foregoing named sons and daughters of Silas H. Barber and Sarah A. Barber are Creek or Muscogee Indians by blood or descent; that the aforementioned Benjamin Posey and Eliza Posey were the grandfather and grandmother of the aforementioned children of Silas H. Barber and Sarah A. Barber, and that the said Benjamin Posey and Eliza Posey were recognized Creek Indians by blood and descent, being, to the best of my knowledge and belief, half-breed Creek Indians or Muscogee Indians.

SILAS H. BARBER.

Sworn to and subscribed before me this 27th day of July, 1896.

W. J. WATTS,  
Notary Public.

VILLAGE OF WAGONER, }  
Creek Nation, I. T. }

Personally appeared before me, a notary public in and for the first judicial dist. of the Ind. Ter'y, one John Posey, an acknowledged citizen of the Creek nation, who, being duly sworn, deposeth and says that James M. Barber is a son of his (Posey's) father's sister, making him a first cousin of the deponent, and that his father is an acknowledged citizen of the Creek nation, and that the said Barber is a citizen of the Creek nation and should be so acknowledged, according to the best of his knowledge and belief.

JOHN M. POSEY.

107 Subscribed and sworn to before me on this 5th day of March, 1894.

JOHN HARVISON,  
Notary Public.

STATE OF TEXAS, }  
County of Limestone. }

Before me, J. H. Vickers, a notary public in Limestone county, Texas, on this day personally appeared R. S. Barber, to me well known, who, being by me duly sworn, states under oath that he, the affiant, is a full brother of S. H. Barber. Affiant further states that



S. H. Barber moved to Texas in the year 1846 and settled in Nacogdoches county, near Lyon Flat, in said county. Affiant further states that soon after his brother (S. H. Barber) came to Texas that he, S. H. Barber, was married to Miss Sarah Ann Posey, who was a daughter of Ben Posey, who was a resident of said Nacogdoches county, Texas. Affiant states further that he (affiant) came to Texas in the year 1854, in the month of March in said year. Affiant states that he stopped at his brother's house when he first came to Texas, and has since that date lived near his brother, S. H. Barber, and has frequently visited him and has been intimately acquainted with the various changes connected with the family of his said brother, S. H. Barber. Affiant further states that at the time he came to Texas, in the year 1854, his brother had five children, namely,  
 108 to wit, Francis, Tom, Ben, Jim, and John. Affiant states that the last-named (John) was the baby and about five months old when he, affiant, arrived at his brother's house in the year 1854. Affiant states that Jim Barber was about eighteen months or two years old at that date. Affiant further states that his brother, S. H. Barber, had never before been married, and that all the above-named children were full brothers and sisters, having the same father and mother. Affiant further states that Sarah Ann Barber, "the mother of Francis, Tom, Ben, Jim, and John Barber," died about the year 1866 or 1867, or thereabouts. Affiant states further that about one year after the death of Sarah Ann Barber S. H. Barber married his second wife, who was at the time of marriage a Mrs. Elizabeth Stinson, who was Elizabeth Posey, and a full sister of his first wife, "Sarah Ann." Affiant states that there are several children by the marriage of S. H. Barber and Elizabeth Stinson. Affiant states that the said Elizabeth Barber died about the year 1883 or 1884, or thereabouts. Affiant further states that about one year after the death of his, S. H. Barber's, second wife, "Elizabeth Barber," that he, S. H. Barber, married the third time. His his third wife was a Mrs. Pollen, and that she had no children by S. H. Barber.

R. S. BARBER.

Sworn to and subscribed before me this the 29th day of June, 1893.

J. H. VICKERS,  
*Notary Public, Limestone County, Texas.*

109 STATE OF TEXAS, }  
       County of Limestone. }

Before me, J. H. Vickers, a notary public in and for Limestone county, Texas, on this day personally appeared D. M. Prendergast, to me well known, whom, being by me duly sworn, states under oath that he has known R. S. Barber for the last thirty-five years, and knows him to be a truthful and reliable citizen, whose word can be relied upon and accepted in court, and as such commend him to be public.

D. M. PRENDERGAST.

Sworn to and subscribed before me this the 29th day of June, 1893.

J. H. VICKERS,  
*Notary Public, Limestone County, Texas.*

STATE OF TEXAS, }  
*County of Limestone.* }

Before me, J. H. Vickers, a notary public in and for Limestone county, [Texas, on this day personally appeared J. J. Beckham, to me well known, who, being by me duly sworn, states that he has known R. S. Barber for the last twenty years, and knows him to be a truthful and reliable citizen, whose word can be accepted upon any subject as perfectly reliable, and as such I cheerfully commend him to the public.

JOHN J. BECKHAM.

110 Sworn to and subscribed before me this the 29th day of June, 1893.

J. H. VICKERS,  
*Notary Public, Limestone County, Texas.*

UNITED STATES OF AMERICA, }  
*Indian Territory, Northern District,* } ss:

M. A. Posey, who, being by me first duly sworn, doth depose and say that he is a member of the Creek nation, Indian Territory.

That he is a first cousin of John C., Rob't T., B. A., J. M. Barber, and M. S. Coker, by blood.

That his father, Bill Posey, was a full brother by blood to their own mother, Sarah Ann Barber.

He further swears that all of said Barbers above named are one-fourth,  $\frac{1}{4}$ , Creek Indians, and as such are entitled to all the rights and privileges of the Creek nation.

M. A. POSEY.

Subscribed and sworn to before me this 28th day of January, 1896.

MYRA YOUNG,  
*Notary Public.*

111 UNITED STATES OF AMERICA, }  
*Indian Territory, Northern District,* } ss:

Before me, Myra Young, a notary public in and for the northern district in the Indian Territory, personally appeared Mrs. E. H. Allen, a member of the Creek nation of the Indian Territory, who, being by me first duly sworn, doth depose and say:

She is a member of the Creek nation of the Indian Territory; that she is the sister of Sarah Ann Barber, the mother of John C. Barber, Rob't T. Barber, J. M. Barber, M. S. Coker, and B. A. Barber.

Affiant further swears that their mother and her own sister by blood was a  $\frac{1}{2}$  Creek Indian by blood.

That she further swears that she is the own sister of Bill Posey by blood, who was a member of the Creek nation up until August, 1878, when he was shot and killed by the authorities of the said Creek nation of the Indian Territory.

She further swears that the said above-named J. M. Barber, B. A. Barber, and their sister, M. S. Coker, were proven citizens of the Creek nation and were placed upon the census rolls of said nation and are entitled to all the privileges and rights of said nation of Indians as all other members of said nation.

112 She further swears that the mother of said Barbers above named was the daughter of Ben Posey and Eliza Posey, who were each  $\frac{1}{2}$  Creek Indians, and that Eliza Posey prior to marriage was a Berryhill.

MRS. E. H. ALLEN.

Subscribed and sworn to before me this 28th day of Jan'y, 1896.  
MYRA YOUNG,  
Notary Public.

UNITED STATES OF AMERICA, } ss:  
Indian Territory, Northern District, }

Before me, Myra Young, a notary public in and for said district, Indian Territory, personally appeared John C. Barber and Rob't T. Barber, who, being by me first duly sworn, both depose and say that they are members of the Creek nation of Indians.

That they are part Indian by blood and are now recognized citizens of the said nation, in said Territory, and are enjoying all the rights and privileges appertaining to such Indians.

They each further swear that they are full brothers to J. M. Barber, B. A. Barber, and M. S. Barber, who is now the wife of M. L. Coker, having the same father and mother; that they each and all five have  $\frac{1}{4}$  Indian blood in them.

113 They further swear that J. M. Barber has now living six children, to wit, Bettie, Bertie, Johnie, Pearl, Niles, and Pink Barber; that B. A. Barber has now living seven children, to wit, Harrison, Mariah E., Eva A., Ida B., Edward H., Sarah A., and Dora D.; that M. S. Coker, their sister, has now living six children, to wit, Silas, Marquis, Robert, Eva, Maud, and Lenah.

They each further swear that M. S. Coker, their sister, did prove up her rights of such Indian blood and did draw her pay in the year 1891 of the Oklahoma money, amounting to \$29.

The affiants further swear that each of their brothers and sister above described and named did prove their rights and were placed upon the census roll of the Creek nation and were entitled each to have enjoyed all rights and privileges thereunder as citizens until the year 1895, when the authorities of said nation, by their appointed committee, did placed them upon the doubtful list of said members of the said nation.

The affiants further swear that their brothers and sister, as named, are entitled to all the rights of members of and citizens in the Creek nation of the Indian Territory.

They each further swear that they are each related by blood to Bill Posey; that said Bill Posey was their uncle by blood; that said Bill Posey was a member of the Creek nation and was shot by the Creek authorities and killed in August, 1878.

114

his  
JOHN C. x BARBER.  
mark.

his  
RIBERT T. x BARBER.  
mark.

Subscribed and sworn to before me this 28th day of Jan'y, 1896.

MYRA YOUNG,

Notary Public.

THE STATE OF TEXAS, {  
Limestone County. }

Before me, the undersigned authority, this day personally appeared Benjamin Posey, to me well known, who, after being duly sworn, says that he is now seventy-six years old, and that he is the father of the following-named children, to wit:

1st. Sarah A. Posey, who was born March 10th, 1825, and married Silas H. Barber, and died, leaving — children.

2nd. Thomas B. Posey, who was born Sept. 14th, 1826; now living.

3rd. Picby Jane Posey, who *who* was born August 13th, 1828; now living.

4th. Benjamin Bell Posey, who was born December 9th, 1829, and died, leaving — children.

5th. John Deacle Posey, who was born May 2nd, 1831; now living.

6th. Martha Alma Posey, who was born Oct. 3rd, 1832; now living, and married — Mayfield.

115 7th. Narcissa Posey, August 2nd, 1834; died without issue.

8th. Uriah Posey was born February 6th, 1836, and died, leaving five children.

9th. Nancy Green Posey was born August 29th, 1837, and married Oswalt and died, leaving two children.

10th. Eli Posey was born March 20th, 1839, and now dead, leaving four children.

11th. Tinsley Elizabeth Posey was born January 31st, 1841, and married John Stinson and died, leaving one child by Stenson.

12th. James Marion Posey was born June 30th, 1842, and died, leaving two children.

13th. George Washington Posey, who was born September the 6th, 1844, died without issue.

14th. William Andrew Jackson Posey was born June 16th, 1846; died, leaving three or 4 children.

Eliza Huldah Posey was born October 9th, 1849, and married Joe Allen; now living.

his  
BENJAMIN x POSEY.  
mark.

Sworn to and subscribed before me this 15th day of September,  
A. D. 1882.

S. D. WALKER,  
Co. Clk, Limestone County, Texas.

116 The affidavit of Lucinda Ann Smith, which is in words  
and figures as follows, to wit:

INDIAN TERRITORY, }  
Northern Judicial Division. }

Now, on this 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public within and for the Indian Territory, Lucinda A. Smith, who, being duly sworn, upon her oath states that her name was Lucinda A. Hopwood; that she was well acquainted with Benjamin Posey, he being her own uncle by blood; that Benjamin Posey and his wife, Eliza Posey, whose maiden name was Berryhill, were descendants of John Berryhill; that their father and mother were brothers and sister- to each other. She further states that Benjamin Posey and his wife, Eliza Posey, were half-blood Creek or Muscogee Indians; she further states that she is acquainted with Eliza Allen, *née* Posey, who was a daughter of Benjamin Posey and Eliza Posey. I know that Eliza Allen was a recognized citizen of the Creek or Muscogee nation. I was acquainted with William A. J. Posey, and know him to be a son of Benjamin Posey and brother to Eliza Allen—a full brother. I know that it was generally stated throughout the Creek nation that William Posey was killed by the Creek authorities; I knew Thomas B. Posey, and that he was a son of Benjamin and Eliza Posey. She further states that Benjamin Posey was the father of the following-named persons, and that he proved up their rights as citizens of the Creek or Muscogee nation—said proof was made before Judge Reed, district judge: Sarah A.

117 Barber, *née* Posey; Benjamin B. Posey, Martha Mayfield, *née* Posey; Uriah Posey, Nancy Green Oswalt, *née* Posey; Eli Posey, Tinsly E. Barber, *née* Stinson, *née* Posey; James M. Posey, William A. J. Posey, Eliza H. Allen, *née* Posey; and she further states that the proof was also made for the children of the foregoing parties mentioned. Affiant further states that she is 64 years of age and is a recognized citizen of the Creek or Muscogee nation.

LUCINDA ANN SMITH.

Subscribed and sworn to before me this 27th day of July, 1896.

W. J. WATTS,  
Notary Public.

The affidavit of Mrs. E. H. Allen, John C. Barber, and Rob't T. Barber is in words and figures following, to wit:

118 UNITED STATES OF AMERICA, }  
Indian Territory, Northern District, } <sup>ss</sup>:

Before me, Myra Young, a notary public in and for the northern district, Indian Territory, personally appeared Mrs. E. H. Allen, a

member of the Creek nation, Indian Territory, who, being by me first duly sworn, doth depose and say—

That she is a member of the Creek nation of the Indian Territory; that she is the sister of Eli Posey, the father of G. W. and Willie Posey.

Affiant further swears that their father and her own brother by blood was  $\frac{1}{2}$  Creek Indian by blood.

That she further swears that she is the own sister of Bill Posey by blood, who was a member of the Creek nation up until August, 1878, when he was shot and killed by the authorities of said Creek nation, Indian Territory.

She further swears that the said above-named G. W. and Willie Posey were proven-citizens of the Creek nation and were placed on the census roll of said nation and are entitled to all the rights and privileges of said nation of Indians as all other members of said nation. She further swears that the father of said Poseys above named was the son of Ben Posey and Eliza Posey, who were each  $\frac{1}{2}$  Creek Indians, and that Eliza Posey, prior to marriage, was a Berryhill.

MRS. E. H. ALLEN.

Subscribed and sworn to before me this 28th of January, 1896.

MYRA YOUNG,  
Notary Public.

UNITED STATES OF AMERICA, } ss:  
Indian Territory, Northern District, }

M. A. Posey, who, being first duly sworn, doth depose and say that he is a member of the Creek nation, Indian Territory.

That he is a first cousin of G. W. and Willie Posey by blood.

That his father, Bill Posey, was a full brother by blood to their own father, Eli Posey.

He further swears that all of the said Poseys above named are one-fourth Creek Indians, and as such are entitled to all the rights and privileges as Indians of the Creek nation.

M. A. POSEY.

Subscribed and sworn to before me this 28th day of Jan'y, 1896.

MYRA YOUNG,  
Notary Public.

120 UNITED STATES OF AMERICA, } ss:  
Indian Territory, Northern District, }

Before me, Myra Young, a notary public in and for said district in Indian Territory, personally appeared John C. Barber and Rob't T. Barber, who, being by me first duly sworn, both depose and say that they are members of the Creek nation of Indians; that they are part Indians by blood and are now recognized citizens of said nation in said Territory, and are now enjoying all the rights and privileges appertaining to such Indians. They each further swear that they are first cousins to G. W. and Willie Posey, who each

have Indian blood in them. They further swear that G. W. Posey has three children, to wit: Katie, Annie, and Claude Posey.

They further swear that the father of the above-named Poseys was Eli Posey, uncle to affiants. Affiants further swear that each of their cousins named did prove their rights and were placed upon the census roll of the Creek nation, and were entitled each to have enjoyed all rights and privileges thereunder as citizens until the year 1895, when the authorities of said nation, by their appointed committee, did place them upon the doubtful list of said members of the said nation.

The affiants further swear that Mary Vance, who is recognized as a citizen of the Creek nation, is a sister of the above-named G. W. and Willie Posey, and that the said G. W. and Willie  
121 Posey are entitled to all rights of members of and citizens in the Creek nation, Indian Territory; they each further swear that they are each related by blood to Bill Posey; that said Bill Posey was their uncle by blood; that said Bill Posey was a member of the Creek nation, and was shot by the Creek authorities and killed in August, 1878.

his  
JOHN C. x BARBER.  
mark.  
ROBT T. x BARBER.

Subscribed and sworn to before me this 28th day of Jan'y, 1896.

MYRA YOUNG,  
*Notary Public.*

The affidavit of Shelton Smith is in words and figures following, to wit:

122 INDIAN TERRITORY, }  
*Northern Judicial Division.* }

Now, on this 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public within and for the Indian Territory, Shelton Smith, who, being duly sworn, upon his oath states that he was acquainted with Benjamin Posey and Eliza Posey, his wife, and that they were recognized as Creek or Muscogee Indians by blood and descent; that he was present at the time when Benjamin Posey proved up the rights of his children before Judge Reed, who was judge of the Okmulgee district, in the Creek or Muscogee nation, according to law.

The following-named persons are the sons and daughters of Benjamin Posey, whose rights were proven up by the said Benjamin Posey before Judge Reed, as above stated; the rights were acquired through blood and not adoption: Sarah A. Barber, *née* Posey; Thomas B. Posey, Benjamin B. Posey, Martha A. Mayfield, *née* Posey; Uriah Posey, Nancy G. Oswalt, *née* Posey; Eli Posey, Tinsley E. Stinson, *née* Barber, *née* Posey; James M. Posey, William A. J. Posey, Eliza H. Allen, *née* Posey.

SHELTON SMITH.



Subscribed and sworn to before me this 27th day of July, 1896.

W. J. WATTS,  
*Notary Public.*

The affidavit of Mary E. Vance is in words and figures following, to wit:

123      INDIAN TERRITORY,      {  
            *Northern Judicial Division.*      }

Now, on this 28th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for the Indian Territory, Mary E. Vance, who, being duly sworn, on her oath states that she is well acquainted with Jennie Johnson, George W. Posey, and William Posey, and knows them to be the lawful sons and daughters of Eli Posey. Affiant further states that she, Mary Vance, is a sister to Jennie Johnson, George W. Posey, and half-sister to Willie Posey, and is a recognized Creek or Muscogee Indian.

MARY E. VANCE.

Sworn to and subscribed before me this 28th day of July, 1896.

W. J. WATTS,  
*Notary Public.*

The affidavit of Hugh Johnson and certificate of L. C. Perryman are in words and figures as follows, to wit:

124      UNITED STATES OF AMERICA,      {  
            *Indian Territory, Northern Judicial District.*      }

Now, on this the 4th day of August, 1896, personally appeared before me, W. J. Watts, a notary public in and for said district and Territory, Hugh R. Johnson, who, being duly sworn, on his oath states that he is the husband of Jennie Johnson, daughter of Eli Posey, and a resident of the Creek nation, where he and his wife have lived for the past ten years; that his wife's name is upon the census roll of 1890 of Broken Arrow town, in said Creek nation, and that she drew annuity money from the United States as a Creek Indian by blood; that she was and has always been recognized as a Creek Indian by blood. Affiant states that the certificate hereto attached and signed L. C. Perryman, as principal chief of the Muscogee nation, is a true and perfect copy of the original which affiant obtained from said chief in person, and was present when said copy was made from said original, and the affiant examined and compared the copy hereto attached with the said original, and the said hereto attached — is in exact words and figures as the original, which original is in the possession of H. O. Sheppard, attorney-at-law, Muscogee, Ind. Ter., who refuses to surrender the said original to this affiant, although he has demanded the same of him.

HUGH R. JOHNSON.

Sworn to and subscribed before me this 4th day of August, 1896.

W. J. WATTS,  
*Notary Public.*

125

EXECUTIVE OFFICE,  
TULSA, IND. TER., *December 5th*, 1892.

This — to certify that Jinney Johnson and her children, Clarence, Fauny, and T. D. Johnson, are on the rolls of the Broken Arrow town, upon the certified rolls, and are entitled to *per capita* payment as Creeks.

(Signed)  
[SEAL.]

L. C. PERRYMAN,  
*Prin. Chief, M. N.*

OKMULGEE, I. T., *Oct. 4th*, 1895.

I certify that the above is a true and exact copy of the original certificate shown to me this day and by me copied as above.

FRED A. PARKINSON,  
*Notary Public.*

The affidavit of Joseph Mingo is in words and figures as follows, to wit:

126 INDIAN TERRITORY, }  
Northern Judicial District. }

Now, on this 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for the Indian Territory, Joseph Mingo, who, being duly sworn, states that he is acquainted with Jennie Johnson, and knows that she was on the rolls and received *per pro rata* part of her money from the Creek or Muscogee nation in the year 1891.

JOSEPH MINGO.

Sworn to and subscribed before me this 27th day of July, 1896.  
W. J. WATTS,  
*Notary Public.*

The affidavits of John C. Barber, Robert T. Barber, and Mrs. E. H. Allen and M. A. Posey are in words and figures as follows, to wit:

127 UNITED STATES OF AMERICA, }  
Indian Territory, Northern District, } ss:

Before me, Myra Young, a notary public in and for said district, in Indian Territory, personally appeared John C. Barber and Rob't T. Barber, who, being by me first duly sworn, both depose and say that they are members of the Creek nation of Indians; that they are part Indian by blood, and are now recognized citizens of the said nation in said Territory, and are enjoying all the rights and privileges appertaining to such Indians; they each further swear that they are first cousins to Ben, Lula, Trudy, & Ambrose Posey; that they each have Indian blood in them; they further swear that the above-named Ambrose Posey has one child, Tommie; they further swear that the father of the above-named Posey was Uriah Posey, uncle to affiants.

The affiants further swear that each of their cousins above named

did make application to prove their rights and were placed on the census roll of the Creek nation and were entitled each to have enjoyed all rights and privileges thereunder as citizens until the year 1895, when the authorities of said nation, by their appointed committee, did place them upon the doubtful list of said members of the said nation.

The affiants further swear that their cousins, as named, are 128 entitled to all the rights of members of and citizens in the Creek nation of the Indian Territory; they each further swear that they are each related by blood to Bill Posey; that said Bill Posey was their uncle by blood; that said Bill Posey was a member of the Creek nation and was shot by the Creek authorities and killed in August, 1878.

his  
JOHN C. x BARBER.  
mark.

his  
ROBERT T. x BARBER.  
mark.

Subscribed and sworn to before me this 28th day Jan'y, 1896.

MYRA YOUNG,  
*Notary Public.*

UNITED STATES OF AMERICA, } ss:  
Indian Territory, Northern District, }

Before me, Myra Young, a notary public in and for the northern district, Indian Territory, personally appeared Mrs. E. H. Allen, a member of the Creek nation of the Indian Territory, who, being by me first duly sworn, doth depose and say

129 That she is a member of the Creek nation, Indian Territory; that she is a sister of Uriha Posey, the father of Ben, Lula, Trudie, and Ambrose Posey.

Affiant further swears that their father and her own brother by blood was  $\frac{1}{2}$  Creek Indian by blood.

That she further swears that she is the own sister of Bill Posey by blood, who was a member of the Creek nation up until August, 1878, when he was shot and killed by the authorities of said Creek nation, Indian Territory.

She further swears that the above-named Ben, Lula, Trudie, and Ambrose Posey were proven citizens of the Creek nation, and were placed upon the census roll of said nation, and are entitled to all the privileges and rights of said nation of Indians as all other members of said nation.

She further swears that the father of said Poseys above named was the son of Ben Posey and Eliza Posey, who were each  $\frac{1}{2}$  Creek Indians, and that Eliza Posey, prior to marriage, was a Berryhill.

MRS. E. H. ALLEN.

Subscribed and sworn to before me this 28th day of Jan'y, 1896.

MYRA YOUNG,  
*Notary Public.*

130 UNITED STATES OF AMERICA, } ss:  
*Indian Territory, Northern District,*

M. A. Posey, being by me first duly sworn, doth depose and say that he is a member of the Creek nation, Indian Territory.

That he is a first cousin of Ben, Lula, Trudie, and Ambrose Posey by blood.

That his father, Bill Posey, was a full brother by blood to their own father, Uriah Posey.

He further swears that all of the said Poseys above named are one-fourth Creek Indians, and as such are entitled to all the rights and privileges as Indians of the Creek nation.

M. A. POSEY.

Subscribed and sworn to before me this 28th of Jan'y, 1896.

MYRA YOUNG,  
*Notary Public.*

The affidavits of Mrs. E. H. Allen, M. A. Posey, John C. Barber, and Robert T. Barber are in words and figures as follows, to wit:

131 UNITED STATES OF AMERICA, } ss:  
*Indian Territory, Northern District,*

Before me, Myra Young, a notary public in and for said northern district, in the Indian Territory, personally appeared Mrs. E. H. Allen, who, being first duly sworn, doth depose and say:

That she is a member of the Creek nation of the Indian Territory; that she is the sister of Tinsley E. Stinson, the mother of Mollie F. Stinson, the wife of Thomas Stockton.

Affiant further swears that her mother and her own sister by blood was  $\frac{1}{2}$  Creek Indian by blood.

That she further swears that she is the own sister of Bill Posey by blood, who was a member of the Creek nation up until August, 1878, when he was shot and killed by the authorities of the said Creek nation, Indian Territory.

The further swears that the above-named Mary F. Stinson, wife of Thomas Stockton, was proven a citizen of the Creek nation, and was placed upon the census roll of said nation, and is entitled to all the privileges and rights of said nation of Indians as all other members of said nation.

She further swears that the mother of said Mary F. Stockton was the daughter of Ben Posey and Eliza Posey, who were each  $\frac{1}{2}$  Creek Indians, and that Eliza Posey, prior to her marriage, was a Berryhill.

MRS. E. H. ALLEN.

132 Subscribed and sworn to before me this 28th day of Jan'y, 1896.

MYRA YOUNG,  
*Notary Public.*

UNITED STATES OF AMERICA, }  
*Indian Territory, Northern District,* } ss:

M. A. Posey, who, being first duly sworn, doth depose and say that he is a member of the Creek nation, Indian Territory.

That he is a first cousin of Mary F. Stockton by blood; that his father, Bill Posey, was a full brother by blood to her own mother, Tensy Elizabeth Barber.

He further swears that Mary Stockton, above named, *are* one-fourth Creek Indians and as such *are* entitled to all the rights and privileges as Indians of the Creek nation.

M. A. POSEY.

Subscribed and sworn to before me this 28th of Jan'y, 1896.

MYRA YOUNG,  
*Notary Public.*

133 UNITED STATES OF AMERICA, }  
*Indian Territory, Northern District,* } ss:

Before me, Myra Young, a notary public in and for said district, in Indian Territory, personally appeared John C. Barber and Rob't T. Barber, who, being by me first duly sworn, both depose and say that they are members of the Creek nation of Indians.

That they are part Indian by blood, and are now recognized citizens of the said nation in said Territory, and are enjoying all the rights and privileges appertaining to such Indians.

They each further swear that they are first cousins to Mollie F. Stinson, now Mrs. Thomas Stockton, who is the daughter of Tensy E. Stinson by her first husband, John Stinson, and said Mrs. Stinson, who was the sister of their mother, Sarah Ann Barber.

That said Mollie E. Stinson has three children—Harry, Roy, and Grover Stockton.

The affiants further swear that their cousin above named did prove her right and was placed on the census roll of the Creek nation and was entitled to have enjoyed all the rights and privileges thereunder as a citizen until the year 1895, when the authorities of said nation by their appointed committee did place her upon the doubtful list of said members of the said nation.

134 The affiant further swears that their cousin, as named, is entitled to all the rights of members of and citizens in the Creek nation, Indian Territory.

They each further swear that they are related by blood to Bill Posey; that said Bill Posey was their uncle by blood; that said Bill Posey was a member of the Creek nation and was shot by the Creek authorities and killed in August, 1878.

his  
 JOHN C. x BARBER.  
 mark.

his  
 ROBT T. x BARBER.  
 mark.

Subscribed and sworn to before me this 28th day of January, 1896.

MYRA YOUNG,  
*Notary Public.*

INDIAN TERRITORY, }  
*Northern Judicial Division.* }

Now, on this 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for and within the Indian Territory, Silas H. Barber, who, being sworn, upon his oath states: Tinsly E. Posey was married to John Stinson in 1862; that she had two children by said John Stinson—Mollie F. Stinson, female, born Oct. 17th, 1863, ago- 32 years, and George W. Stinson, male, born July 15th, 1867, aged 29 years. John Stinson died in 1868; 135 that during the year of 1868 said Tinsly E. Stinson married Silas H. Barber, the said Tinsly E. Barber being a full sister to Sarah H. Barber, *née* Posey. Affiant further states that said Tinsly E. Barber was a daughter of Benjamin Posey and Eliza Posey, who were recognized Creek or Muscogee Indians by blood and descent.

SILAS H. BARBER.

Subscribed and sworn to before me this 27th day of July, 1896.  
W. J. WATTS,  
*Notary Public.*

The affidavit- of E. H. Allen, Thomas Barber, John Barber, and Silas H. Barber are in words and figures as follows, to wit:

136 INDIAN TERRITORY, }  
*Northern Judicial Division.* }

Now, on this 28th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for the Indian Territory, Eliza H. Allen, Thomas Barber, John Barber, and Silas H. Barber, who, being duly sworn, on their oaths state that they are well acquainted with Mollie Stockton and know her to be the daughter of John Stinson and Tinsly E. Stinson, *née* Posey, she being a daughter of Benjamin Posey and Eliza Posey. Affiants further state that they have been recognized as citizens of the Creek nation.

E. H. ALLEN.

his  
THOMAS x BARBER.  
mark.

his  
JOHN x BARBER.  
mark.

SILAS H. BARBER.

Sworn to and subscribed before me this 28th day of July, 1896.  
W. T. WATTS,  
*Notary Public.*

The affidavit of John C. Barber, Robert T. Barber, and Joseph Mingo are in words and figures as follows, to wit:

137 INDIAN TERRITORY, }  
Northern Judicial District. }

Now, on this 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public within and for the Indian Territory, John C. Barber, Robert T. Barber, and Joseph Mingo, town chief, who, being duly sworn, upon their oaths state that they were well acquainted with Martha S. Coker and know that she did in February, 1819, draw her proportional part of money from the Creek nation as a citizen of such nation.

his  
JOHN x C. BARBER.  
mark.

his  
ROBERT x T. BARBER.  
mark.

JOSEPH MINGO.

Subscribed and sworn to before me this 27th day of July, 1896.

W. J. WATTS,  
Notary Public.

The affidavit of Joseph Mingo, which is in words and figures as follows, to wit:

138 INDIAN TERRITORY, }  
Northern Judicial Division. }

Now, on this 28th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for the Indian Territory, Joseph Mingo, who, being duly sworn, upon his oath states that he is well acquainted with Robert T. Barber, John C. Barber, and Mary Vance and knows them to be credible witnesses, and also states that they are recognized citizens of the Creek or Muscogee nation and at present members of my town.

JOSEPH MINGO,  
Chief Broken Arrow Town.

Subscribed and sworn to before me this 28th July, 1896.

W. J. WATTS,  
Notary Public.

The affidavit of J. M. Allen, E. H. Allen, Thomas Barber, and John Barber is in words and figures as follows, to wit:

139 INDIAN TERRITORY, }  
Northern Judicial Division. }

Now, on this 28th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for the Indian Territory, J. M. Allen, Eliza H. Allen, Thomas Barber, John Barber, who, being



duly sworn, on their oaths state that they are well acquainted with Jennie Johnson and know her to be the lawful daughter of Eli Posey.

J. M. ALLEN.

E. H. ALLEN.

his  
THOMAS x BARBER.  
mark.

her  
JOHN x BARBER.  
mark.

Sworn to and subscribed before me this 28th day of July, 1896.

W. J. WATTS,  
Notary Public.

The affidavits of Mrs. E. H. Allen, M. A. Posey, John C. Barber, Robert T. Barber, and Silas H. Barber are in words and figures as follows, to wit:

140 UNITED STATES OF AMERICA, }  
Indian Territory, Northern District, } ss.

Before me, Myra Young, a notary public in and for the northern district, Indian Territory, personally appeared Mrs. E. H. Allen, a member of the Creek nation, Indian Territory, — being by me first duly sworn, doth depose and say:

She is a member of the Creek nation of the Indian Territory; that she is the sister of Tinsley Elizabeth Barber, second wife of S. H. Barber, who was the widow of John Stinson, whose maiden name was Posey, and who is the mother of R. F. Barber, R. W. Barber, H. J. Barber, and L. E. Barber.

Affiant further swear- that their mother and her own sister by blood was  $\frac{1}{2}$  Creek Indian by blood.

That she further swears that she is the own sister of Bill Posey by blood, who was a member of the Creek nation up until August, 1878, when he was shot and killed by the authorities of said Creek nation, Indian Territory.

She further swears that the said above-named R. F., R. W., H. J., and L. E. Barber were proven citizens of the Creek nation, and were placed upon the census roll of said nation, and are entitled to all the privileges and rights of said nation of Indians as all other members of said nation.

141 She further swears that the mother of said Barbers above named was the daughter of Ben Posey and Eliza Posey, who were each  $\frac{1}{2}$  Creek Indians, and Eliza Posey, prior to her marriage, was a Berryhill.

MRS. E. H. ALLEN.

Subscribed and sworn to before me this 28 day of Jan'y, 1896.

MYRA YOUNG,  
Notary Public.

UNITED STATES OF AMERICA, }  
*Indian Territory, Northern District.* }

M. A. Posey, who, being by me first duly sworn, doth depose and say that he is a member of the Creek nation, Indian Territory.

That he is a first cousin of R. F., R. E., H. J., and L. E. Barber by blood.

That his father, Bill Posey, was a full brother by blood to their own mother, Tinsley Elizabeth Barber.

He further swears that all of said Barbers above named are one-fourth Creek Indians, and as such are entitled to all the rights and privileges as Indians of the Creek nation.

M. A. POSEY.

Subscribed and sworn to before me this 28th day of Jan'y, 1896.

MYRA YOUNG,  
*Notary Public.*

142 UNITED STATES OF AMERICA, }  
*Indian Territory, Northern District.* }

Before me, Myra Young, a notary public in and for said district, in the Indian Territory, personally appeared John C. Barber and Rob't T. Barber, who, being by me first duly sworn, both depose and say that they are members of the Creek nation of Indians, that they are part Indian by blood, and are now recognized citizens of the said nation, in said Territory, and are enjoying all the rights and privileges appertaining to said Indians.

They each further swear that they are half-brothers to R. F. Barber, R. W. Barber, H. J. Barber, and L. E. Barber, having the same father, but different mothers, their mother being Tinsley Elizabeth Barber, second wife of S. H. Barber and the widow of John Stinson, whose maiden name was Posey, and that they each have one-fourth Indian blood in them. They further swear that H. J. Barber has one child, Jessie J. They each further swear that R. W. Barber and R. F. Barber did prove up their rights of such Indian blood and did draw their pay, in the year 1891, of the Oklahoma money, amounting to \$29 00 each.

Affiants further swear that each of their brothers above described and named did prove their rights and were placed upon the census roll of the Creek nation and were entitled each to have enjoyed all rights and privileges thereunder as citizens until the year 1895,

143 when the authorities of said nation, by their appointed committee, did place them upon the doubtful list of said members of said nation. They further swear that their brothers are entitled to all the rights of members of and citizens in the Creek nation of the Indian Territory. They each further swear that they are related by blood to Bill Posey; that said Bill Posey was their uncle by blood; that said Bill Posey was a member of the Creek

nation, and was shot by the Creek authorities and killed in August, 1878.

his  
JOHN C. x BARBER.  
mark.

his  
ROB'T T. x BARBER.  
mark.

Subscribed and sworn to before me this 28th day of Jan'y, 1896.  
MYRA YOUNG,  
*Notary Public.*

INDIAN TERRITORY, }  
Northern Judicial Division. }

Now, on 27th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for and within the Indian Territory, Silas H. Barber, who, being duly sworn, upon his oath states: On — —, 1868, he married Tinsley E. Stinson, whose maiden name was Tinsley E. Posey, she being a sister of my former wife, Sarah A. Barber, whose maiden name was Sarah A. Posey; that the 144 said Tinsley E. Barber, *née* Stinson, *née* Posey, was a daughter of Benjamin Posey and Eliza Posey, who were half-breed Creek or Muscogee Indians.

Affiant further states that the following-named persons are the sons of Silas H. Barber and Tinsley E. Barber:

Twins { Richmond F. Barber, born Aug. 16, 1869, age 27.  
Richard W. Barber, " " " " "  
Hardy J. Barber, " July 2nd, 1872, " 24.  
Lafayette E. Barber, " May 18th, 1874, " 22.

Affiant further states that the foregoing-named sons of Silas H. Barber and Tinsley E. Barber are Creek or Muscogee Indians by blood and descent; that Benjamin Posey and Eliza Posey were the grandfather and grandmother of the aforementioned children of Silas H. Barber and Tinsley E. Barber, and that the said Benjamin Posey and Eliza Posey were, to the best of his knowledge and belief, half-blood Creek or Muscogee Indians.

SILAS H. BARBER.

Subscribed and sworn to before me this 27th day of July, 1896.  
W. J. WATTS,  
*Notary Public.*

145 INDIAN TERRITORY, }  
Northern Judicial Division. }

Now, on this 28th day of July, 1896, personally appeared before me, W. J. Watts, a notary public for the Indian Territory, Joseph Mingo, who, being duly sworn, states that Richmond F. Barber — Richard W. Barber were on the census rolls of the Creek nation. He further states that Richmond F. Barber and Richard W. Barber drew their proportional part of their money from the Creek nation in 1891.

JOSEPH MINGO.

Sworn to and subscribed before me this 28th July, 1896.

W. J. WATTS,  
Notary Public.

The evidence taken before the special master, N. A. Gibson, is in words and figures as follows, to wit:

146 In the United States Court in the Indian Territory, Northern District, at Muscogee.

JENNIE JOHNSON ET AL. }  
vs. } #56.  
CREEK NATION.

The testimony of witnesses on the part of the appellants in the above cause, taken before me, the undersigned special master, at my office, in Muscogee, I. T., in pursuance of the attached notice, that appellants appearing by attorney and in person and the appellee not appearing, but filing, through its attorney, the attached protest.

GEORGE TIGER, being duly sworn, says:

Q. 1. State your name, age, and residence.

A. My name is George Tiger; my age, about 41. I live two miles west of Eufaula.

I am Creek Indian of the full blood. I am a Creek lawyer and have held different positions in the nation. First, I was a member of the house of kings, then a member of the house of warriors, then a member of a commission on citizenship matters. I acted as chairman in citizenship matters. I was district judge *pro tem*. I am acquainted with James M. Barber. I am pretty well familiar with the act of the Creek council known as the alien act. The intention of the alien law when passed was this: It was based upon sec. 4 of the treaty of 1832.

147 This sec. debarred those Indians back in Alabama who remained and took a patent from the United States Government.

Art. 4 says: "At the end of five years all the Creeks entitled to these selections and desirous of remaining shall receive patents therefor in fee simple from the United States."

This 4th art. refers to the 2nd art. of the same treaty.

I was a member of the citizenship commission of five in the year 1896. While the commission was in session the alien law came up and barred the people from being admitted to citizenship who had established their Creek blood. The question was submitted to the supreme court of the Creek nation for a decision as to the law, and that said court decided that it applied to those of the Creek people who had taken their patents from the United States in Alabama and who had not put their foot on Creek soil here for 21 years. There — some cases before the citizenship commission in the year 1895 which had been decided and certificates issued to them by Chairman Colbert, stating that the parties had complied with the

requirements of the law for admission to citizenship in the Creek nation, but that they were debarred from admission by the alien act. These cases caused the question to be submitted to the supreme court, and after the decision or interpretation of the law, as applying to the Creeks back in Alabama who had never put their foot on Muscogee soil, all those who *who* had such certificates were admitted by me as acting chairman. I could do nothing else. One of these cases was Mrs. Throckmorton, another Dr. Turvin, another Otho

Durant, another the Thompson-Rowley family; the next was 148 Tom Grayson. These five families held certificates from Colbert, and after the barrier was removed I had to admit them.

Colbert made a report to the council afterwards and the council approved all of them except the Thompson-Rowley case. It was simply prejudice, that was all. The evidence was all correct. I was sent for by the committee having the matter in charge and made a statement as to how the matter was, and the committee simply ignored it. The others were all O Kd.

They are enrolled on the town rolls today.

I was a member of the house of warriors in the year 1895 and was one of the 12 members of that house who were appointed upon the committee of eighteen.

When that committee held its meetings no summonses were issued and no testimony was taken. The chairman held that no investigation was to be had, but we were there only to reject. If one member objected to citizens of the town of another member, then he, in order to get even, would object to a number of citizens of the first man's town. That is the way the matter was carried on. Members objected to citizens whom they did not know at all; 96 were rejected in my town by a man who did not know them. These parties had been born and raised in my town and had always been citizens, but this old man had them rejected. When their cases were investigated by the commission of five they were all put back on the rolls. All the people in the Barber and Posey case (Jennie Johnson *et al.*) were rejected at that time. I had known Barber for a long time before that. W. T. Morgan, Mary Wassom, and others were struck off at that time. The persons struck off by the

149 committee were all on the Creek rolls that had been approved by the council before that time.

JENNIE JOHNSON ET AL. }  
vs.  
CREEK NATION. }

NAPOLÉON B. CHILDERS, a witness for appellants, being first duly sworn, says:

I am 53 years old. I live in the Creek nation. Wagoner is my post office. I am a citizen of the Creek nation. I am judge of Coweta district of the Creek nation. I have held this position most of the time for 10 years. In the years 1892 of 1893, while I was judge of Coweta district, I got an order from L. C. Peryman, who was then principal chief of the Creek na-

tion, to investigate the citizenship of the Barbers and Poseys, who lived near Wagoner. There had been some report made to him about them, and he wanted the matter investigated by me. Complaint had been made to him that the Barbers and Poseys were going into some contract pastures and making farms, and that they were not citizens. When I got the notice from him I notified Jim Barber and the others, through my officer, to meet me at the court-house on a certain day with their evidence, and they met me on that day, and I held the investigation. I notified Joe Mingo, who was the chief of Broken Arrow town, to which these parties claimed to belong, to be there, and he was present on the day. I took the testimony of the witnesses that they produced there—citizens. I questioned the witnesses closely myself, and the evidence went to show that  
150 they were citizens and had a right there. The evidence is on the record. I then had a talk with Mingo, and he informed me that they had had the same evidence all the time, and that they were entitled to citizenship, and for that reason he had them on his town rolls. I then made a report to the chief to the effect that they had a right there as citizens. That seemed to settle the question, and they remained there as constituents of Broken Arrow town, and the town chief kept them on his rolls until they were taken off the rolls. I recognized them as citizens until they were taken off the rolls.

Our chiefs have always held that it was the duty of the district judges to settle the question of citizenship of persons in their districts. I succeeded Judge Wesley Tiger, and have his records. I have all of the records of the Coweta district court. The record book that was made under Judge Tiger, when Lewis McHenry was his clerk, is here; all the fore part is torn out; about one-third of the book is torn out.

This record book is made an exhibit to this testimony, marked Exhibit A.

It was the custom for a great many years for the town chief to keep a roll of the citizens of his town, and when he came to the council no question was made as to the names on the roll. This custom was in full force until a few years ago; I can't tell exactly how long ago. There was no change in this custom until the chiefs of the different towns began to scratch the rolls of each other's towns.

151 This brought on conflicts among them, and the matter was taken into council, and the council began to legislate about it.

There has been no positive law, as far as I know, repealing this custom. If there had been such a law it would have been the duty of the principal chief to communicate it to the judges. Some hold that it is the duty of the judges to pass on these citizenship matters, and some hold that it is not. Several years ago the question came up in the council of which I was a member at that time as to who should draw the payment that was to be made. Finally, the committee of 18 was appointed to investigate the rolls. When the committee investigated the rolls they did not notify the parties whom

they were investigating. They took up the different names, and if they thought they should not be on the rolls the names were scratched off. I was before that committee several times. The Barbers and Poseys were scratched off at that time, and also Morgan, Wassom, Perry, and a whole lot of others. The roll from which these parties were scratched was the legal roll of the Creek nation.

I was twice summoned before the citizenship commission of five at Okmulgee in the case of the Barbers and Poseys. I was there both times, but was not called on the stand either time. They never had any trial either time I was summoned there.

After the decision of Judge Adams in regard to the alien law, I, with a great many others, considered that the law was of no  
152 effect, because they went right straight and took in some that it had gone against.

And further deponent saith not.

JOSEPH MINGO, a witness for the appellants, being duly sworn, upon his oath says:

My name is Joseph Mingo; my town is Broken Arrow town. I am king of that town; it is one of the 47 towns of the Creek nation. I am a full-blood Creek Indian. I have been king of that town since 1883, with the exception of two years, when I resigned to be judge, and at the expiration of that time I was re-elected and am still in that position. Before my time there was a Creek Indian by the name of Bill Posey who left the Creek nation and afterward came back and proved up his rights and was readmitted to citizenship, and his sister, Mrs. Allen, came back to the nation and proved up her rights; then their connections came in and proved up their rights. Some of them came in after I became town king, but they started before my time. When Bill Posey came back I was not an official of the town, but was present, and there were some old members of the town who knew him, and he saw Posey readmitted to citizenship on the recognition of these old members of the town. Before Mrs. Allen came back the council had passed a law requiring all applicants to prove up their rights to citizenship before a district judge of the nation. My town king, who was a full-blood, asked me to look after the matter, as I had charge of the rolls and could write, and Mrs. Allen went before Judge Reed, of Muscogee district, and proved up her rights as the sister of Bill Posey and  
153 the daughter of a full-blood Creek Indian who had gone away from the Creek nation.

Afterwards the council passed an act repealing the act which required the district judge to pass upon these citizenship cases.

Then an act and resolution was passed by the council requiring each town king to make a correct roll of his own town. At that time I was elected town king of the Broken Arrow town, and I noticed this act authorizing each town king to make a correct roll of his town. In making the roll I found that Jim Barber's mother was a full sister of Mrs. Allen, but had come back after the repeal of the



act authorizing them to prove up their rights before the judge, and I deemed it my duty in order to make a true and correct roll of my town. If Mrs. Allen was a citizen that her sister was also a citizen; that it was satisfactory to the law that I should pass upon these people's rights in order to get a correct roll of the town, and therefore I enrolled them in my town.

At the time I was enrolling them Mary Stockton came up, and though her maiden name was a little different, they proved that she was of the same family, and so I enrolled her. I had the roll made up as correctly as I could with these names on it, and it was submitted to the council and the roll approved and it was considered an authentic roll of the Creek nation. Then, in the meantime, I had resigned my position as town king to accept the position of judge of Coweta district. A new man was appointed town king in my stead. The council, following my resignation as town king, made an appropriation to pay out some *per capita* money.

154 Then there was a committee appointed by the council consisting of the members known as the eighteen committee to look over the rolls that were in the hands of the town kings, and I have found since that there were a great number of the members of my town that were scratched off by this committee. I came to the council then while this was in progress and inquired of the officials of the town at that time how come the names of these parties to be scratched off the rolls. I found out that these new officials, not knowing these parties as well as I did and their status when objections were raised against them, were unable to set up proof as to their citizenship. After that there was a bond required for them to have a hearing in court. Knowing their status as I did, I went on their bonds for costs, but they have failed to have their day in court to this date. I know all the older members of the family. They were Mollie Stockton, James Barber, George A. Posey, George Eli Posey, and a number of other- whose names were struck off. They struck off the whole family.

In the meantime, before Jim Barber came back, his brothers, Tom and John Barber, came to the nation and made an application to the council that they were Indians by blood, and the council referred their application to their committee on citizenship. There they proved satisfactorily to the committee that they were Creek Indians by blood. The committee reported favorably and they were accepted by the council. The acts of the council could be found on the docket.

155 There was an incident where L. C. Perryman, the principal chief, ordered Judge Childers to investigate the status of Jim Barber and his connection. Judge Childers called on me and took evidence as to their status. After taking my evidence and that of all the parties he could find he told me, not in court, according to the evidence they could not be deprived of their rights unless other evidence was presented setting aside the evidence that had been given in. They were undoubtedly citizens, but he did not deem it the authority of the court to pass upon citizenship cases, but that he was going to report to the chief with a copy of the evi-

dence and his opinion in all the cases; but as to the disposition of the case I know no further. I have been acquainted with this family before my time as town king when I had nothing to do with the affairs of the town, and I know that they are of the same family and closely related, but while John and Tom Barber show more Indian about them, Jim Barber and the others that have been scratched off show more like white people than the other- did.

Among the full-bloods of the council it appeared to them and there were rumors circulated during the council that Jim Barber and the others were only half-brothers of Tom and John Barber because of their being kept out of their rights up to date. It was on account of their looking like white people.

The history of these parties going off and coming back, my old folks have never lost trace of these people, but the cause of their leaving this country was that before the constitution was adopted, according to the customs and laws among the Indians at that day,

156      *was* if any Indians were to marry any of their relations, no matter how distant, their ears and noses should be cut off; that the parties married relations and had to leave on that account. Jackson Doyle, Haney, and George Stidham were the witnesses that knew these people before they went away and recognized them when they come back. They have never been looked upon as lost people. When Bill Posey and Mrs. Allen and the others came back these old folks were still living and were the principal witnesses in this case. At present there is not one of those old folks living.

And further deponent saith not.

ELLIS CHILDERS, a witness for the appellants, being be me first duly sworn, upon his oath says:

My name is Ellis Childers. I am a citizen of the Creek nation by blood. I have held a number of official positions in the Creek nation.

I am familiar with the methods of establishing rolls in the Creek nation for the past 10 years. I have been chief of the Cheyaha town for the past ten years, and have had control of the town and making up the rolls of the town for that time. There are 47 towns in the Creek nation. The town chief and the town king make up the rolls, and the town kings presents the rolls to the chief whenever he calls for it. There is a standing law that each town shall make a roll of its own members. Under the law the king and the chief have the authority to make up the rolls of their town.

157      The first citizenship law that I know of was that the different district judges had the right to pass upon the questions of disputed citizenship.

I was speaker of the house of warriors at the time the eighteen committee was appointed, and as such appointed the members of that committee who came from the house of warriors. That was in 1894 or 1895.

There was some money to be paid out *per capita*, and the council appointed this committee to examine the rolls. Every town king

had to present his rolls to this committee; then the act authorized that if any one reliable citizen objected to any person on the rolls of any town that the committee should strike the names of such person off the roll for further investigation.

This committee was not instructed to go into details and get evidence to find out whether the persons objected to were really not citizens, but they were to strike off the names of any person objected to, and then the person was to be notified and given a chance to show that he was really entitled to citizenship.

It got to be kind of a trade for a while striking off people and getting employment from them to get them back on the rolls.

There were about 200 struck off the roll.

I was town chief at the time and also speaker of the house. I do not remember whether my father, N. B. Childers, or Charlockkee, was town king at the time. I was informed, as the custodian of the

rolls of Cheyaha town, that a number of my people had been  
158 struck off the rolls. There were the Smiths the Evans', Mr.

John Jordan's children, and Mr. Rulison's wife and the children; so, placing a *pro tem.* speaker in my place, I took my position before the committee and staid there with them for a week. Then I found out that Taylor Chisso, then town chief of Broken Arrow town, who had been in Muscogee for several years, and George Lovett, a member of the house of warriors from the same town, and Gabriel Jamison, then the town king of Arkansas town, who lived near Muscogee and claimed to be acquainted with these people, had stated that these parties were Cherokees and not Creeks. This objection had knocked these people off my rolls. I went to these parties and told them the condition of my people and tried to get them to understand the matter, but could get no satisfaction out of them. It being my duty to look after the interest of my town, I went before the committee and staid there a week with them.

The Broken Arrow town was brought up first, and finally they struck the Barbers and Poseys. I am well acquainted with the family and knew their connection, and I made an objection to Jim Barber and George Eli Posey and the Coker family and the Stocktons and a number of others. I tried to make an objection to half of them, but do not know whether I got half of them or not. Then I commenced on Gabriel's town and I objected to Wassom's wife and Morgan and several others—Perry and a whole lot of them. Then I began on Spring town and knocked Clarence Turner's family off. I was trying to get my revenge.

The committee took my word and scratched them off.

Those were the legal rolls of the Creek nation. After I  
159 done that I tried to get my people back. I did not object to these parties because I did not think that they were citizens, but I wanted to get my people back on and tried to get a compromise and have the kings let my people back, and then I would have withdrawn my objections and let the parties back to whom I had objected. Finally I got all my people on except the Smiths, but I had to resort to other means.

These people were not notified and were given no chance to prove

their rights. These parties have been considered citizens both before and after that time. They have exercised the rights of citizenship and have been tried in our courts and forced to do public duties. I summoned Posey, Morgan, and Barber as militia when I was the captain of the militia in the Cook gang troubles.

The supreme court decided that the alien act was unconstitutional and that the council could not pass an act depriving any persons with Creek blood of their interests in the land.

I was presiding officer of the council at the time the alien act was passed. We had a great number of people who were applying for citizenship, and some of them traced to people back in Alabama and Georgia. It was made to apply to the people who had never come to the Indian Territory, but had taken their land in the old country, and was never intended to apply to people who had been here and had afterwards gone away. I had a good deal to do with the alien law, and think I dictated it.

And further the deponent saith not.

160 LEWIS MCGILBRA, a witness for the appellants, being by me first duly sworn, upon his oath says:

My name is Lewis McGilbra. I am a Creek Indian by blood. I live 4 miles west of Eufaula. I am about 37 years of age and am a full-blood Creek Indian.

I was a member of the committee of eighteen. The instructions given to that committee by the council were that the committee should call upon the town kings for the rolls of the members of their towns; then these rolls should be read before the committee slowly and distinctly, and if any citizen should object to any name as not being properly on the roll the committee must strike the name off.

A great number were scratched off. In my own town there was a big number scratched off. This committee had no authority to pass upon any citizenship, and consequently they merely followed the rules that were placed before them and put aside each and every person that any one objected to. We having no right to force the parties objecting to proof, we could not do any more than just scratch the names off the rolls they were on.

The committee made a list of those that they had scratched off and sent it to the council, but there was no disposition made of the list that they made of the parties who had been scratched off.

I was not a town king at the time, but was a member of the house of warriors from Hickory Ground town.

In my own town were a great many scratched off that I  
161 did not know very well, but there were three women who had been raised there and whom I knew to be citizens who were scratched off. The last session of council recognized these women and appropriated their money for the *per capita* payment that they missed by being scratched off the roll.

These women were full-bloods and were thrown off because they married Choctaws and went just across the Canadian river to live. The rolls before the committee were the regular authenticated rolls

of the towns. It is a standing law and custom for each of the 47 towns, through their kings, to make up their rolls of their own citizens, and then these rolls are presented to the council for approval.

I don't remember the names of all the persons objected to, but I do remember that Ellis Childers came in and objected to the Barbers, Poseys, Berryhills, and a whole lot of others, and they were all struck off the roll. At that time we had no right to decide as to these parties' rights to citizenship, but this was done to keep them from drawing their *per capita* money.

The committee did not mean exactly to deprive these parties of their rights, but according to our instructions we had to strike them off when any one objected to their names, and we understood that there was to be some other tribunal in which they could establish their rights to citizenship. Upon the report of this committee, the commission knew — as the commission of five to try the rights of these parties struck — off the rolls.

I do not know anything of the actions of that commission

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And further the deponent saith not.

MOSES SMITH, a witness for the appellants, being first duly sworn, upon his oath says:

I am 30 years old. I am a farmer. I was a member of the committee of eighteen. I was a member of the house of warriors from Tulsa Canadian town.

The committee were instructed, as well as I can remember, to demand from each town king the rolls in his possession. This was done. We went along, and, according to our instructions, any man could come up and make objections to any name on the roll, and he was not required to present any proof. He just had to come up and say that this man is doubtful, and then the committee had to scratch him off and put him on another list. This was done.

We took up a town at a time, and if any objected we took the names off. By the rules that we were working under we had no authority to notify the persons objected to, or to pass upon any questions of citizenship. We made a report to the council showing the names of all parties stricken off, amounting to either 618 or 628, I do not remember which. We could do nothing but make the report, and we expected council to make a disposition of the names that we had stricken off.

When the committee was appointed John Goat was made chairman and served about a week, and then was elected a delegate to Ft. Gibson, and appointed me as chairman in his stead. While the committee was investigating the different rolls, quite a number of the citizens that had been stricken off the rolls came to me and wanted a hearing, wanting a chance to prove that they were citizens and had been wrongfully stricken off the rolls. I replied to them that the committee was not authorized to take any depositions or to pass upon any cases, that all that they could do was to strike or accept names, and they would have to look to the council for redress for anything that was done by the com-

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mittee. The council had passed an act authorizing the kings of the towns to make rolls of the citizens of their towns, and this had gone on for some time and they had made rolls which had been approved by the council. When the payment came on there was some question as to whether there were not too many on the rolls, and the committee was appointed to investigate the rolls. When the investigation began, one man would object to the names on the rolls of another king, and that king would object to names on the roll of the first king, and finally it got to be a fight between them.

The town kings had a right, under the act of council, to make a correct list of the members of their towns, and if it had not been for certain prejudice that existed among the members of the council that caused the creation of this committee there would not have been any names scratched off whatever.

I learned, from being in the position I was in, that this committee was organized to exercise—which they did—a great deal of prejudice work, which is sometimes practised by the politicians of the Creek nation.

164 As near as I can remember, this took place during the May session of the council in 1895.

If this committee had not been appointed there could not have been any scratching, because the kings had the authority to make up the rolls of their towns. They were the legal rolls.

These rolls made up by the kings which were submitted to the committee of eighteen were the last rolls that have been made up under the authority of the Creek nation, as far as I know.

I remember the names of James Barber, Mollie Stockton, George Eli Posey, George A. Posey, Morgan, Mary A. Wassom, Mrs. Coker, Ben Posey, and a great many others.

And further the deponent saith not.

JAMES M. BARBER, being first duly sworn, says:

My name is J. M. Barber; my age is 45 years; I live in the Creek nation,  $2\frac{1}{2}$  miles from Wagoner; my grandfather's name was Benjamin Posey; my grandmother's name was Eliza Berryhill; they were both half-breed Creek Indians. When I knew them first they lived in Texas, but they moved to this country years ago, about 1882.

My mother's name was Sarah E. Posey. My father was a white man; his name was Silas H. Barber. Tom Barber and John Barber are my full brothers. I am between the two. I am a full  
165 brother of the two. They are the John C. Barber and the Robert T. Barber whose names appears on page 178 of Perryman's Digest of the Creek Laws, approved Oct. 30, 1889.

Also on page 103 of McKellop's Digest of 1893. Mary Vance is my first cousin. Birdie Vance, Baby Vance, George Vance, and Joseph Vance are her children. They are mentioned in the same place in the Digest. W. M. Oswalt and M. W. Oswalt are my cousins. W. M. Oswalt's mother and my mother were full sisters. The other is his child.

I was born in Texas. My grandparents are dead. My grandfather died in the Creek nation, and is buried on Billy Brown's



place in the Creek nation, about 8 miles from Choska. The other appellants in the Jennie Johnson are all children, grandchildren and great-grandchildren of Benjamin Posey. Bill Posey was my full uncle. He was killed in the Creek nation by the authority of the Creek nation. He was known and recognized by every one in this country as a Creek citizen and was never disputed. I came to the Indian Territory, Creek nation, in 1872. I afterward left the Indian Territory and went back to Texas. I intended to come back. I have always all my life claimed this as my home. My people have always claimed this as our home and some of us have come back here every year. They came back and were recognized as citizens of the nation. I last came back here in September, 1890, and have resided here continuously ever since and have all my possessions here.

166 I have made right smart improvements in the Creek nation. I have farms, pastures, cattle, and hogs. I was called before Judge Childers, of Coweta district, Creek nation, by a notice, which is hereby presented and a copy filed herewith, marked Exhibit B. The light-horse man who served this on me told me that they wanted me to appear before the court and show why I was living here; that there was some dispute about it; that they wanted me to bring up all of my connections; we were living in a lawful pasture, and we were claimed to be non-citizens, and they wanted us to go there and to prove that we were citizens.

I notified my connection living around me—George W. Posey, known as George Eli Posey; Mollie Stockton, and my young half-brothers, Coker's wife, whom I represented (Mary S. Coker), and some other young ones. All of us appeared before the court on the day mentioned in the summons. Court set and called the trial. Joseph Mingo, being my town king, represented the case before the court. We satisfied the court that we were citizens. The judge told us to go home and attend to our own business; that we were all right. We held our *our* improvements, and have till today. The pastures that I was in was leased to John Gibson, and he refused to pay for the part I held. Afterwards the part I was on was cut out of the pasture, and my place was surveyed out of the

167 pasture. By the authority of the nation, the surveyor who was employed to survey the pastures was ordered to leave out the place of citizens in the large pastures, and my place was left out when the pastures were surveyed. Afterwards I began to fence the mile square north of my place for my pasture, and made a trade with the man who had the pasture leased by which he paid me for that mile square. Joseph Mingo has always claimed me as a member of his town and a citizen of the nation, and has always appeared and defended me when my rights were questioned. I have voted in the Creek nation ever since 1889, in the principal elections—that is, in the elections of the chief. I have voted in my town as a town member all the time till last year—the last election we have had; that was in the election called to consider the treaty with the Dawes commission. We all voted in that election. I have acted as a deputy light-horse—as militia man. I was called on by Judge



N. B. Childers to assist the light-horse, and did so serve. I have guarded prisoners and acted in that capacity until the court discharged me in the Chepon-Flannery case. I was requested by the judge to summon ten men. I summoned W. T. Morgan and other men some of my relations, Ben Posey and G. W. Posey.

I have held the position of assistant to the district attorney, Upter Bird, since January, 1897, under appointment from him, as shown by the attached authority filed herewith and marked Exhibit

168 C. A copy is filed *my* the special master.

Before I put in my place I went to see Chief Perryman and showed him my papers and told him who I was. He told me that he recognized me as a citizen, and that I was as much a citizen as he was, and that the law did not bar me from putting in the place; that I was all right, and that I should pick me out a place and go to work. This was all before I made the proof of citizenship before Judge N. B. Childers. I was struck off the rolls of the Creek nation by the committee of eighteen in 1895. I was never summoned to appear and was never given any opportunity to appear and make my proof before that commission. I afterwards made application to the commission of five and gave bond for the costs and staid there six weeks trying to get a trial. They would not give me a trial and adjourned without giving me a trial. I then went before the Dawes commission and made the application which is now here in this court on appeal.

#### EXHIBIT B TO TESTIMONY OF J. M. ROGERS.

COWETA DISTRICT, *June 6th*, 1893.

Mr. James Barber :



By order from the executive off. I do hereby require you to appear before me and establish your rights for living and claiming a right in the Muscogee nation.

169 Given under my hand the year and date above written.

N. B. CHILDERS,  
*Judge Coweta Dist., M. N.*

P. S.—Appear at the court-house on the 13th of June with your witnesses.

I hereby certify that the foregoing *os* a true copy of the original this day exhibited to me. This Jan. 12, 1898.

N. A. GIBSON,  
*Special Master.*

#### EXHIBIT C TO THE TESTIMONY OF J. M. BARBER.

COWETA DIST., M. N., *Jan'y 19th*, 1897.

To whom it may concern :

Know ye that I, Upter Bird, by power of authority vested in me by law of the M. N. as prosecuting attorney in and for the Coweta dist., do this day give Jim Barber authority to seize and confiscate

all peltry game of any kind, such as wild ducks, chickens, squirrels, quails, or any game of any kind that non-citizens may kill for speculation and sell to the highest bidder, and also chordwood or wood of any kind that a non-citizen may be handling for speculation.

Witness my hand the year and date above written.

UPTER BIRD,

*Pro. Att'y, Coweta Dist., M. N.*

170 I hereby certify that the foregoing is a true copy of the original this day exhibited to me. This Jan. 12, 1898.

N. A. GIBSON,

*Special Master.*

WARRIOR RENTIE, a witness for the appellants, being by me first duly sworn, upon his oath says:

My name is Warrior A. Rentie. I am 35 years old. I am a citizen of the Creek nation. I live about three miles northwest of the town of Muscogee. I was a member of the committee of eighteen which was appointed by the Creek council in 1895. I was a member of the house of warriors.

That committee did not summon any of the parties before it whose names were taken off the rolls and did not summon any witnesses that I remember of. The law provided that whenever there was an objection made by any citizen of the Creek nation against any one whose name might appear on the rolls that that person's name should be set aside. It did not matter whether he was known at all times to have been a citizen or not. That was about the way they got at it. There were no persons there to object except the committee. Some of the members of the council came into the committee meetings and had names scratched off the rolls. A good many of them did that. I

171 remember that some of the Barbers and Poseys were taken off. There were a number of these Poseys and Barbers scratched off the rolls. There seemed to be some trouble between the town kings and the members of the towns—one man would have some names scratched off the rolls of some town and then the member from that town as an act of retaliation would have names scratched off the rolls of the town of the first man. The committee used what were regarded as the authenticated rolls. These were the authenticated rolls up to that time. If this scratching had not taken place the rolls that were used would have been the rolls confirmed by the act of Congress of June 10, 1896.

I am a lawyer by profession. I was employed in the Creek court in a case in which there was a dispute between Walter Posey and Childers—had some trouble over some land—and he was charged with resisting the light-horse. That was in the Coweta district court. The Creek court took jurisdiction of that case and no question was made about jurisdiction or citizenship. He was taken up as any other citizen.

I think he was one that was struck — by the committee of 18. The committee struck off a great many names from the rolls.

And further deponent says not.

GABRIEL JAMISON, a witness for the appellants, being by me first duly sworn, says :

172 My name is Gabriel Jamison. My age is 56 years. I live in Coweta district, Creek nation. I am a citizen of the Creek nation. In 1895 I was town king of Arkansas town while the committee of 18 was in session.

I was a member of the house of kings at that time. I was present at some of the meetings of the committee. I went in to present the roll of Arkansas town. They struck off a great many of the names. They struck off Mary A. Wassom, W. T. Morgan, and a number of others. A good many of them have got back, and others have not. Josie Hawkins and his family were struck off at the same time. G. W. Miller, N. O. Perry, J. W. Weer, Hester Toon, J. M. Clark, J. W. & Isaac Walker, and W. J. Mount, and their families were all struck off.

The kings commenced fighting one another in the house, and would come up and say, "I don't believe that man has any right here," and they would scratch off the name and would not allow the town king to say anything to show who the people were. After they would not allow me to say anything to show who my people were, I grabbed my roll and told them that according to law I was the judge of the citizens of my town, and that I would take my roll and leave. Mr. Childers and Mr. Rentie, who were sitting there, told me not to leave, but to let them do what they pleased with the names, and so I let them have the roll. They went to work and struck off a good many families, and afterwards the council found that a good many people that they knew well were off, and they put them back, but those that they did not know never had a chance to get back.

173 I objected to a good many in Ellis Childers' Broken Arrow town whom I did not know at all, and he did the same for my town. Some of the Poseys and Barbers were struck off while I was before the committee, and some of them were kept on the roll. The committee was using the regular authentic rolls of the Creek nation. These were the same rolls, with the exception of the scratched names, that were in existence at the time the Dawes commission took charge in June, 1896.

And further deponent saith not.

The applicant here offers the judgment and record in the cases of the Barbers and Poseys in their application for citizenship before the judge of Coweta district of the Muscogee nation, said judgment bearing date June 13th, 1893.

LEWIS MCHENRY, a witness for the appellants, being first duly sworn, testified as follows:

I am a Creek citizen. I have held the office of clerk of the district court and permit inspector for Coweta district, and am now captain of the light-horse. Wesley Tiger was judge of the district court when I was clerk. The book exhibited to me is the record book of the district court used during the time I was clerk, and Wesley Tiger was judge, and this book was used for recording judgments of that court. I was clerk of the

174 court when the following cases were tried by Judge Tiger: Mary A. Wassom, J. E. Weer, Hester A. Toon, W. T. Morgan, G. W. Miller, N. O. Perry, W. J. Mount, Jacob Walker, Isaac Waler, Esther Clark, and J. M. Clark and their families. All of these parties were found to be Creek citizens, and Judge Tiger rendered a judgment to that effect. I, as clerk, entered up the judgment in these cases. Judgments were entered in this book offered as evidence as Exhibit "A" to the deposition of N. B. Childers. From examination I find that this book has been mutilated since leaving my hands by the cutting out of the first twenty-four pages. All the writing I did was in this book, and all of my writing was done in those twenty-four pages which have been cut from this book, and also all the judgments rendered by Judge Tiger were recorded in those pages which have been cut out.

And further deponent saith not.

TACKY GRAYSON, the next witness, after being duly sworn, was examined and testified as follows:

I am a citizen of the Creek nation. I have held the office of light-horse captain under Judge Tiger's administration, and am now a member of the council. I have been a member of the council for six years. I was present when the committee of eighteen struck off the names of the Wassoms and Morgans, Barbers and Poseys.

175 They never had any notice of that fact until a month or two afterwards, when I met Mr. Wassom and told him about it. I was present at the hearing of the cases of Morgan, Wassom, Weer, Toons, G. W. Miller, N. O. Perry, W. J. Mount, Jacob Walker, Isaac Walker, Esther Clark, and J. M. Clark cases. I was there when Mr. Mount came with a Creek witness who was named Thomas Norfer, who stated that Morgan and the Wassom families were Creeks by blood. The case was postponed until the judge got his clerk, and I interpreted for the judge and Mount's, and they put down all those names, and they were recognized as Creeks until struck off by the committee of eighteen. Nobody had anything to do with the rolls except the town king. The rolls of the town king were always recognized by the council as the rolls of the Creek nation.

And further deponent saith not.

N. O. PERRY, being duly sworn, testified as follows:

I was present at the trial — Gabriel Jameson, town king, and heard the trial of Gabreil Jameson before Judge Childers on the charge of

treason for enrolling these applicants mentioned above in the testimony of McHenry. Judge Wesley Tiger testified that he ordered Jameson, town king, to enroll the Wassoms and others mentioned in the testimony of Mr. McHenry.

And further deponent saith not.

Attest:

N. A. GIBSON,  
*Special Master.*

176 JUDGE'S OFFICE, COWETA DISTRICT, M. N., Jan. 15, 1898.

I, N. B. Childers, a judge of Coweta district, Muscogee nation, do this day certify that this — the record book for the Coweta district court used by Wesley Tiger in 1891, who was at that time judge for the Coweta district, Muscogee nation.

Witness my hand the day and year last above written and the seal of Coweta district, Muscogee district.

N. B. CHILDERS,  
*Judge, Coweta Dist.*

[SEAL.]  
COOIE CHILDERS,  
*Clerk, Coweta Dist.*

JUDGE'S OFFICE, COWETA DISTRICT, M. N., Jan. 15, 1898.

To my knowledge appeared, at the Coweta district court-house of Coweta, June 13th, 1893, at the investigation of the citizenship of Poseys and Barbers, held by N. B. Childers, then a judge of Coweta district, James Barber, M. S. Coker, G. W. Posey, Mollie F. Stokton, R. F. Barber, R. W. Barber, Hearty J. Barber, L. E. Barber.

I do this the day and year above written certify that the parties above mentioned are the parties that was tried in the Coweta  
177 district court for their citizenship by request of L. C. Perryman, then a principal chief of the Muscogee nation, by N. B. Childers, then also a judge of Coweta district.

[SEAL.] COOIE CHILDERS,  
*Clerk of Coweta District, M. N.*

"Copy."

*Mrs. Eliza Allen's Testimony.*

Wherein N. B. Childers, judge of Coweta dist., investigates the citizenship of the Barbers and Poseys.

What may be your name?

Ans. Mrs. Eliza Allen.

Where were you raised?

Ans. In Texas.

When did you come to the nation?

Ans. In 1883.

How old are you?

Ans. Forty-three years old.

Do you know Jim Barber?

Ans. Yes, sir.

Do you know how old he is?

— Well, I could not tell exactly, but I have known him ever since he was born.

Where was Jim Barber born at?

178 Ans. He was born in eastern Texas, Nacogdoches Co.

Who was Jim Barber's father?

Ans. Silas Barber.

Who was his mother?

Ans. Sarah Posey by birth, but Sarah Barber by marriage.

What degree of Indian blood have Jim Barber?

— His mother was a half-breed Creek Indian.

Was his mother related to you?

Ans. She was my sister.

Was Jim Barber's mother and you full sisters?

Ans. She was my full sister.

What was your mother's name?

Ans. Her name was Eliza Berryhill by birth.

Was Bill Posey any relation to you?

Ans. I am his sister.

Was Jim Barber's mother sister to Bill Posey?

Ans. Yes, sir.

The above statement sworn to before me this the 13 day of June, 1893.

[SEAL.]

N. B. CHILDERS,  
Judge, Coweta District.

COOIE CHILDERS, Clerk.

I do this the 15th day of Jan., 1898, certify that the above is a true and correct copy of the original record book of 1893, found — page 87.

COOIE CHILDERS,  
Clerk, Coweta Dist., M. N.

179

"Copy."

*Tom Barber's Testimony.*

Wherein N. B. Childers, judge of Coweta dist., investigates the citizenship of Barbers and Poseys.

Is Jim Barber your brother?

Ans. Yes, sir.

Is you and Jim Barber full brothers?

Ans. Yes, sir.

What relative is them boys to you?

Ans. Posey is my first cousin and Barber is my brother.

Above statements sworn to before me this the 13th day of June, 1893.

[SEAL.]

N. B. CHILDERS,  
*Judge, Coweta District, M. N.*

COOIE CHILDERS,  
*Clerk, Coweta Dist., M. N.*

I, Cooie Childers, clerk of the Coweta dist. court, do this the 15 day of Jan., 1898, do certify this is a true and correct copy of the statement of Tom Barber as was taken by me at day of trial, June 13th, 1893.

COOIE CHILDERS,  
*Clerk, Coweta Dist.*

180

*Copy of Decision.*

After questioning the witnesses in Barbers' and Posey case, I, N. B. Childers, judge of Coweta district, rule and so decide that the claimants heretofore mentioned were citizens of the Muscogee or Creek nation and entitled to enrollment.

Witness my hand this the 13th day of June, 1893, and the seal of Coweta dist.

[SEAL.]

N. B. CHILDERS,  
*Judge, Coweta District, M. N.*

COOIE CHILDERS,  
*Clerk of Coweta District.*

I, Cooie Childers, clerk of Coweta dist. court of Coweta, do this the 15th day of Jan., 1898, certify that this is a true and a correct copy of the decision of N. B. Childers, judge of Coweta dist., in the case of Barbers' and Poseys' citizenship.

COOIE CHILDERS,  
*Clerk of Coweta Dist., M. N.*

181

On the 27th day of September, A. D. 1898, there was filed in the office of the clerk of said court the petition for appeal in said cause, which is in words and figures as follows, to wit:



In the United States Court for the Northern District, Indian Territory.

JENNIE JOHNSON, CLARENCE JOHNSON, MARY F. JOHNSON, JENNIE B. Johnson, Walter A. Johnson, Benjamin A. Barber, Mariah E. Barber, Eva A. Barber, Ida B. Barber, Sarah E. Barber, Edward H. Barber, Dora D. Barber, James M. Barber, Sarah E. Barber, Berdie E. Barber, John S. Barber, Martha S. Coker, *née* Niles Barber, Mary M. Barber, Martha S. Coker, *née* Barber; 182 Martha S. Coker, *née* Barber; Silas G. Coker, James M. Coker, Robert T. Coker, Eva Coker, Maud F. Coker, Elva L. Coker, Benjamin B. Posey, Mary Lula Posey, Nina G. Posey, Fred Posey, George W. Posey, Katie Posey, Annie Posey, Claud Posey, Mollie F. Stockton, *née* Stinson; Ray M. Stockton, Harry T. Stockton, Grover C. Stockton, R. F. Barber, R. W. Barber, Hardy J. Barber, Jessie L. Barber, 183 L. E. Barber, and William Posey, Appellants,

*versus*

THE CREEK NATION, Appellees.

The above-named complainants, deeming themselves aggrieved by the decree made and entered in the above-entitled cause on the 16th day of June, 1898, hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

CRAVENS & VON WEISE,  
*Solicitors for Complainants.*

Dated September 1st, 1898.

The foregoing claim of appeal is allowed.

WM. M. SPRINGER,  
*Judge of the United States Court,  
Northern District, Indian Territory.*

Dated September 27th, 1898.

(Endorsed as follows:) Filed September 27th, 1898. Jas. A. Winston, clerk.

184 On the 27th day of September, 1898, there was filed in the office of the clerk of said court bond to prosecute appeal in said cause, which is in words and figures as follows, to wit:

In the United States Court for the Northern District, Indian Territory.

JENNIE JOHNSON, CLARENCE JOHNSON, MARY F. JOHNSON, JENNIE B. Johnson, Walter A. Johnson, Benjamin A. Barber, Mariah E. Barber, Eva A. Barber, Ida B. Barber, Sarah E. Barber, Edward H. Barber, Dora D. Barber, James M. Barber, Sarah E. Barber, Berdie E. Barber, John S. Barber, Pearl I. Barber, 185 Niles Barber, Mary M. Barber, Martha S. Coker, *née* Barber; Silas G. Coker, James M. Barber, Robert T. Barber, Eva Coker, Maud F. Coker, Elva L. Coker, Benjamin B. Posey, Mary Lula Posey, Nina G. Posey, Fred Posey, Geo. W. Posey, Katie Posey, Annie Posey, Claud Posey, Mollie F. Stockton, *née* Stinson; Ray M. Stockton, Harry T. Stockton, Grover C. Stockton, R. F. Barber, R. W. Barber, Hardy J. Barber, 186 Jessie I. Barber, L. E. Barber, and William Posey, Appellants,

*versus*

THE CREEK NATION, Appellees.

*Bond.*

Know all men by these presents that we, Frank M. Davis, J. M. Barber, T. M. Stockton, J. N. Fain, G. W. Posey, and M. L. Coker, are held and firmly bound unto the Creek Nation in the full and just sum of one thousand (\$1,000.00) dollars, to be paid to the said Creek Nation, its certain attorney, administrator, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dates this the 1st day of September, in the year of our Lord one thousand eight hundred and nin-ty-eight.

Whereas lately, at a United States court for the northern district of the Indian Territory, in a suit depending in said court between Jennie Johnson *et al.*, appellants, and The Creek Nation, appellees, judgment was rendered against the said appellants, and the said appellants having obtained and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and citation having issued to the said Creek Nation, citing and admonishing it to be and appear at a Supreme Court of the 187 United States, to be holden at Washington, on the first Monday of — next:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else in full force and virtue to remain.

FRANK M. DAVIS.

J. M. BARBER.

T. M. STOCKTON.

J. N. FAIN.

G. W. POSEY.

M. L. COKER.

Sealed and delivered in the presence of—

UNITED STATES OF AMERICA, }  
*Northern District, Indian Territory,* } ss:

— — —, being sworn, deposes and says and each for himself says that he is worth — dollars over and above all his just debts, liabilities, and legal exemptions.

Sworn to this the — day of September, 1898.

Approved the within bond and the sureties thereon.

W. M. SPRINGER.

(Endorsed as follows:) Filed September 27th, 1898. Jas. A. Winston, clerk.

188 On the 27th day of September, 1898, there was filed in the office of the clerk of said court a bond for clerk's fees, which is in words and figures as follows, to wit:

In the United States Court for the Northern District, Indian Territory.

JENNIE JOHNSON, CLARENCE JOHNSON, MARY F. JOHNSON, JENNIE }  
 B. Johnson, Walter A. Johnson, Benjamin A. Barber, Mariah E. }  
 Barber, Eva A. Barber, Ida B. Barber, Sarah E. Barber, Edward }  
 H. Barber, Dora D. Barber, James M. Barber, Sarah E. Barber, }  
 Berdie E. Barber, John S. Barber, Pearl I. Barber, Niles }  
 189 Barber, Mary M. Barber, Martha S. Coker, *née* Barber; }  
 Silas G. Coker, James M. Coker, Robert T. Coker, Eva }  
 Coker, Maud F. Coker, Elva L. Coker, Benjamin B. Posey, }  
 Mary Lula Posey, Nina G. Posey, Fred Posey, George W. Posey, }  
 Katie Posey, Annie Posey, Claud Posey, Mollie F. Stockton, *née* }  
 Stinson; Ray M. Stockton, Harry T. Stockton, Grover C. }  
 Stockton, R. F. Barber, R. W. Barber, Hardy J. Barber, }  
 190 Jessie L. Barber, L. E. Barber, and William Posey, }

Appellants,

*versus*

THE CREEK NATION, Appellee.

*Bond for Clerk's Fees.*

Know all men by these presents that we, J. M. Barber, G. W. Posey, F. M. Stockton, & W. L. Koker, of Wagoner, in the Creek nation, Indian Territory, *Indian Territory*, are held and firmly bound unto J. H. McKenney, clerk of the Supreme Court of the United States, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said J. H. McKenney, his heirs, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, assigns, or administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 1st day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, — a United States court for the northern district of the Indian Territory, in a suit depending in said court between Jennie Johnson *et al.*, plaintiff, and The Creek Nation, defendants, a judgment was rendered against the said plaintiffs, and the said

191 plaintiffs having obtained an appeal in the said cause to the Supreme Court of the United States and filed a transcript of the record in said cause in the office of the clerk of the Supreme Court of the United States to reverse the judgment in the aforesaid suit :

Now, the condition of the above obligation is such that if the said obligors shall well and truly pay or cause to be paid to the said J. H. McKenney, his heirs, executors, administrators, or assigns, all such fees as shall accrue to him, the said J. H. McKenney, clerk, as aforesaid, and charged to the said appellants in the prosecution of the said appeal, then the above obligation to be void ; otherwise to be in full force and virtue.

J. M. BARBER.

G. W. POSEY. [L. s.]

T. M. STOCKTON.

M. L. COKER. [L. s.]

Sealed and delivered in the presence of—  
— — —

I, James A. Winston, clerk of the United States court for the northern district of the Indian Territory, do hereby certify that the within-named obligors are known to me to be perfectly good and responsible for the within-named amount.

— — —, Clerk.

Approved :

W. M. SPRINGER, *Judge.*

(Endorsed as follows :) Filed September 27th, 1898. Jas. A. Winston, clerk.

192 On the 12th day of September, A. D. 1898, there was filed in the office of the clerk of said court the assignment of errors in said cause, which is in words and figures as follows, to wit:

In the United States Court for the Northern District, Indian Territory.

JENNIE JOHNSON, CLARENCE JOHNSON, MARY F. JOHNSON, JENNIE B. Johnson, Walter A. Johnson, Benjamin A. Barber, Mariah E. Barber, Eva A. Barber, Ida B. Barber, Sarah E. Barber, Edward H. Barber, Dora D. Barber, James M. Barber, Sarah E. Barber, Berdie E. Barber, John S. Barber, Pearl I. Barber, Niles Barber, Mary E. Barber, Martha S. Coker, *née* Barber; Silas G. Coker, James M. Coker, Robert T. Coker, Eva Coker, Maud F. Coker, Elva L. Coker, Benjamin B. Posey, Mary Lula Posey, Nina G. Posey, Fred Posey, George W. Posey, Katie Posey, Annie Posey, Claud Posey, Mollie F. Stockton, *née* Stinson; Ray M. Stockton, Harry Stockton, Grover C. Stockton, R. F. Barber, F. W. Barber, Hardy J. Barber, Jessie L. Barber, L. E. Barber, and William Posey, Appellants,

*versus*

THE CREEK NATION, Appellees.

*Assignment of Errors.*

The appellants, by their attorneys, allege and say that in the record and proceedings in this cause there is manifest error in this:

1st. That by the record aforesaid it appears that the judgment aforesaid given was given for said appellee against these appellants, whereas by the law of the land it ought to have been given for the said appellants against the said appellee.

2nd. That the said judgment and decree was given against the evidence in the case.

3rd. And in this, that the said judgment and decree denies the right of these appellants to be enrolled as members of the Creek tribe of Indians, whereas the testimony shows that they are members of said tribe by blood and residents, and should have been enrolled as such by the judgment and decree aforesaid.

4th. In this, that the judgment and decree aforesaid is contrary to the facts found and reported by the master in chancery.

5th. In this, that the court erred in holding that the district courts of the Creek nation had no authority to hear and determine applications for citizenship in the Creek nation.

6th. In this, that the court erred in holding that the council of the Creek nation had supervisory jurisdiction of the district courts in reference to enrolling citizens.

7th. In this, in finding that these appellants should be excluded by the act of the Creek council of October 26th, 1889, it appearing from the testimony that all these appellants except James M. Barber and his children had come into and were residents of the Creek nation prior to the passage of said act, and that all these appellants, including James M. Barber and his children, had, before the passage of that act, applied for citizenship in the Creek nation, and they all come within the proviso contained in section 298, to wit: "This act

shall not apply to persons who have heretofore filed application for citizenship and where cases are now pending."

8th. In this, that the court held that the applicants for citizenship in the Creek nation might, under the act of the Creek council as referred to by the court on page 63 of Perryman's Compilation, prove their citizenship by a responsible, disinterested native witness  
196 before the district court, and yet that said courts could render no judgment or finding of citizenship upon said proof.

9th. That the court erred in disregarding the testimony of Judge N. B. Childres, one of the judges of the Creek nation, as to the laws and customs of the Creek nation authorizing the district courts thereof to pass upon matters of citizenship and the enrollment of the applicants.

10th. That there was an error in the court finding that roll from which the names of the appellants was stricken was a mere census roll, whereas it was a roll of Creek citizens made in accordance with the laws and customs of the Creek nation.

11th. There was an error of the court in finding that the action of the committee of eighteen, who were appointed to revise the rolls, was approved by the Creek council.

12th. There was an error of the court in finding that the roll of citizens made by the committee of eighteen was a final roll, it appearing from the testimony that said roll was made in an illegal way, and that many persons who were citizens by blood were stricken from said roll without any authority of law and as a matter of retaliation.

13th. There was error of the court in finding that it was incumbent upon appellants or any of them to appear before the citizenship commission of eighteen and secure the replacing of their  
197 names upon the roll, when it appears from the testimony that they had no notice of their names being stricken from the roll and no opportunity to be heard in any manner whatever.

14th. That there was an error in the court finding the one Ellis Childers, a witness for the appellants, was recently treasurer of the Creek nation, and owing to alleged official misconduct was deposed from that position, and is now under indictment at Vinita for issuing fraudulent Creek warrants, the same being found without the slightest shadow of testimony.

15th. That the court erred in finding that appellants or any of them had the question of their citizenship decided by the commission appointed by the act of May 30th, 1895, and were rejected by said commissioner, the proof showing that said commission never acted upon the case of these appellants at all.

16th. The court erred that these appellants were dropped from the Creek rolls by the council of said nation.

17th. There was error of the court in this, that it considered the record of the proceedings of the Creek citizenship commission, which was not submitted in evidence either by the appellants or the appellee.

18th. There was error of the court in finding that the Creek citi-

zenship commission denied the application of these appellants because it failed to admit them.

And the appellants pray that the judgment aforesaid be reversed, annulled, and altogether held for nothing, and that an order may be made directing appellants to be enrolled as members of the Creek tribe of Indians, and that they may be restored to all things which they have lost by occasion of the said erroneous judgment and decree.

CRAVENS & VON WEISE,  
*Attorney- for Appellants.*

(Endorsed as follows:) Filed Sept. 27th, 1898. Jas. A. Winston, clerk.

On the 27th day of September, 1898, there was filed in the office of the clerk of said court a citation on appellees in said cause, which is in words and figures as follows, to wit:

In the United States Court for the Northern District, Indian Territory.

JENNIE JOHNSON, CLARENCE JOHNSON, MARY F. JOHNSON, JENNIE B. Johnson, Walter A. Johnson, Benjamin A. Barber, Mariah E. Barber, Eva A. Barber, Ida B. Barber, Sarah E. Barber, Edward H. Barber, Dora D. Barber, James M. Barber, Sarah E. Barber, Berdie E. Barber, John S. Barber, Pearl I. Barber, Niles Barber, Mary M. Barber, Martha S. Coker, *née* Barber;  
Silas G. Coker, James M. Coker, Robert T. Coker, Eva Coker, Maud F. Coker, Elva L. Coker, Benjamin B. Posey, Mary Lula Posey, Nina G. Posey, Fred Posey, George W. Posey, Katie Posey, Annie Posey, Claud Posey, Mollie F. Stockton, *née* Stinson; Ray M. Stockton, Harry Stockton, Grover C. Stockton, R. F. Barber, R. W. Barber, Hardy J. Barber,  
Jessie L. Barber, L. E. Barber, and William Posey, Appellants,

*versus*

THE CREEK NATION, Appellees.

United States of America to the Creek Nation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, (30) thirty days after the date of this citation, pursuant to an appeal filed in the clerk's office of the United States court for the northern district of the Indian Territory, wherein Jennie Johnson *et al.* are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said petition mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Wm. M. Springer, judge of the United States court for the northern district of the Indian Territory, this



the 27th day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

W. M. SPRINGER, *Judge.*

Service of this citation accepted this 22d day of October, 1898.

BEN T. DU VAL,

*At'y for Creek Nation.*

(Endorsed as follows:) Filed September 27th, 1898. Jas. A. Winston, clerk.

UNITED STATES OF AMERICA, }  
202 *Indian Territory, Northern District,* } ss :

I, James A. Winston, clerk of the United States court for the northern district, Indian Territory, do hereby certify that the writings annexed to this certificate are true, correct, and compared copies of the originals remaining of record in my office, and constitute a true copy of the record and of the assignment of errors and of all proceedings in the case of Jennie Johnson and others against The Creek Nation.

Witness my hand and the seal of said court, at Muscogee, Indian Territory, on this the 21st day of October, A. D. 1898.

{ Seal United States Court in the Indian Territory, }  
{ Northern District, Muscogee. }

JAS. A. WINSTON, *Clerk,*  
By N. S. YOUNG,  
*Deputy Clerk.*

Endorsed on cover: Case No. 17,046. Indian Territory U. S. court. Term No., 461. Jennie Johnson *et al.*, appellants, *vs.* The Creek Nation. Filed October 27th, 1898.



# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 496

THE CHICKASAW NATION, APPELLANT,

vs.

RICHARD C. WIGGS ET AL.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
TERRITORY.

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FILED OCTOBER 23, 1898.

(17,081.)

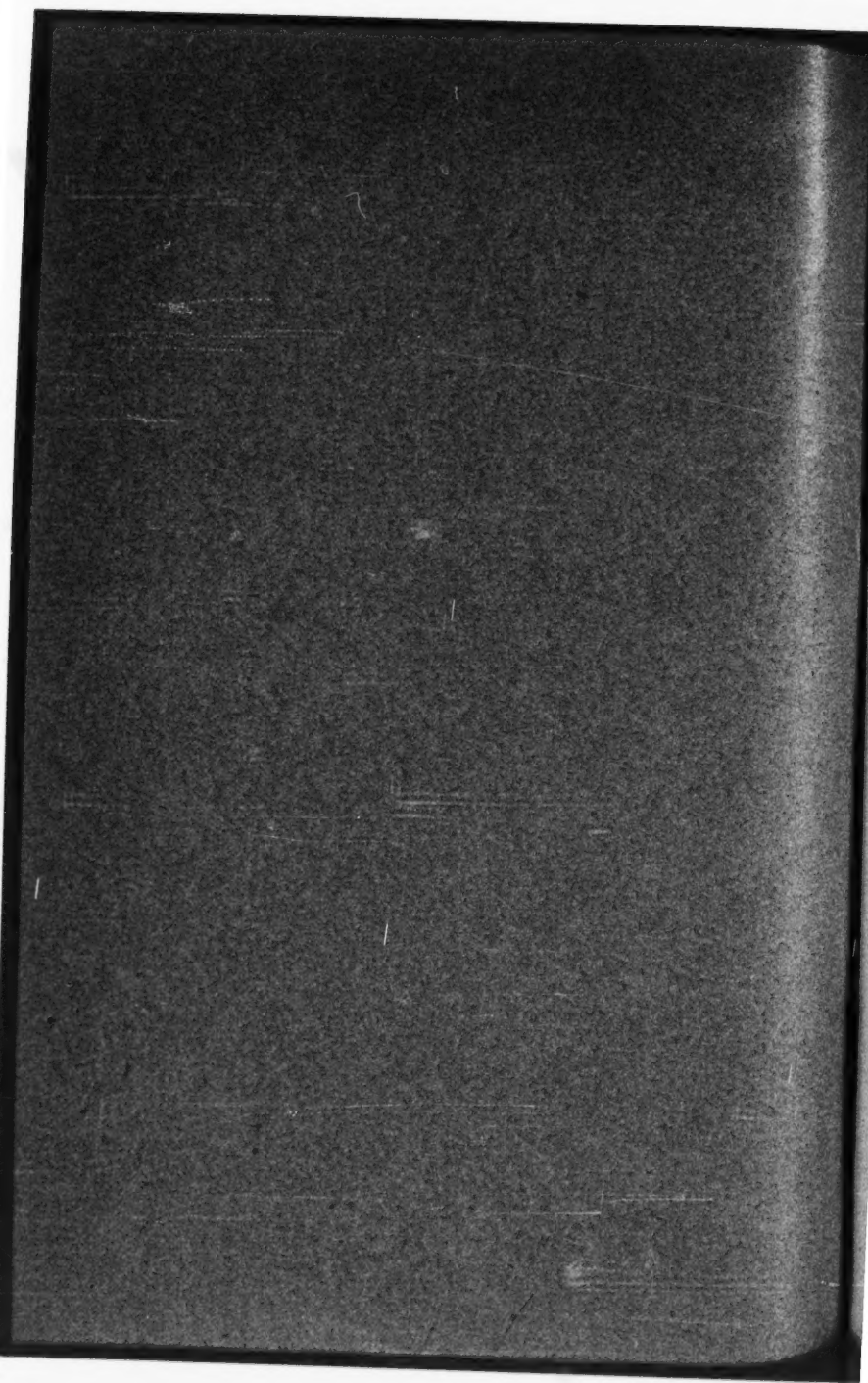
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(17,081.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 496.

THE CHICKASAW NATION, APPELLANT,

*vs.*

RICHARD C. WIGGS ET AL.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
TERRITORY.

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1-3 Be it remembered that at the stated term of the United States court in the Indian Territory, southern district, at Ardmore, begun and holden at Ardmore on the 5th day of October, 1896, and on the 40th day of said term, to wit, the 8th day of December, 1896—present and presiding, the Hon. Constantine B. Kilgore, judge—the following, among other, proceedings were had, to wit:

*In re cases of citizenship appeal.*

It is ordered by the court that the following rules be, and the same are hereby, adopted as rules of practice and procedure in appeals to this court from the decision of the tribal authorities or the United States commission to the five civilized tribes appointed to treat with said tribes, which are provided for by act of Congress, upon questions arising upon applications made by persons to be enrolled as citizens of the respective tribes of Indians.

The party desiring to appeal from the decision of any such tribunal or commission may within sixty days after notice of the rendition of the decision thereon file with the clerk of this court an application or petition, duly verified, setting out the style of such case; that the same has been decided adversely to the party filing the application for appeal, and praying that the said commission or tribunal be notified of said appeal and ordered to forward the papers to the clerk of this court, together with a duly certified transcript of all judgments and entries made and rendered by said tribunal or commission in said cause; whereupon the clerk shall issue a notice to said tribunal or commission, notifying that an appeal has been taken, and to immediately forward all papers in said cause, together with a duly certified copy of all judgments and entries made and entered by said tribunal to the clerk of this court.

The application for citizenship, amendments thereto, and answer thereto and amendments thereto shall constitute the pleadings of all of the parties in this court, and no pleadings shall be held invalid for want of form. In accordance with the practice before the commission, any party aggrieved may present and prosecute an appeal herein for the use and benefit of the entire family, including the wife, lineal descendants, and collateral kindred, to the United States court for the southern district of the Indian Territory. Where one or more of the applicants for citizenship reside in the southern district of the Indian Territory, the appeal shall be taken to the United States court for the southern district, and if all the applicants are non-residents of the Indian Territory, then said appeal shall be taken to the United States court held in the division in this Territory wherein the nation of the tribe to which said applicants claim to belong is situated. The clerk of the court shall file said papers and docket the case in a separate book to be kept for that purpose and known as the "citizenship docket," and the clerk shall also keep a separate record book in which shall be recorded the proceedings of this court in reference to citizenship cases, to be known as the "citizenship rec-



ord." The party desiring to appeal from any decision rendered by an Indian tribunal or the commission shall at the time he files his notice of appeal with the clerk of the United States court also lodge with said clerk evidence of the fact that notice of some kind has been served upon the opposite party or his attorney in the case that said application would be made. The notice need not be formal, but shall be required to be only so drawn as to inform the opposite party of the intention to appeal from said decision. After the expiration of the ten days after such service, waiver of appearance, or the filing of such papers with the clerk where notice of appeal is given before the commission, the case shall stand ready for trial, and the court shall be deemed open at all times for the purpose of hearing and determining such cases, and either party to said

5 action may introduce such other evidence as they may have in support of their cause of action or defense, regardless of whether the same was presented to the commission or not.

The court may, in its discretion or when agreed to by the parties, refer all papers in these cases to a special master, with instructions to take the testimony and report upon the law and facts presented in the record, pleadings, and service. Such reports shall be made at the earliest time practicable, not exceeding thirty days from the time each cause is referred to said master, and either party shall have ten days after the report of said master is filed to file exceptions thereto, both as to questions of law and fact, and after five days from the filing of the exceptions to said report the cause shall stand ready for trial before this court on the exceptions presented to the master's report and may be taken up and finally passed upon by the court.

The special master shall be allowed as compensation \$5 for each cause heard, provided not more than one day's time is devoted to said cause, and in case more than one day's time is consumed he shall have \$10 and no more as his compensation for hearing the same.

Should the United States commission or the tribunal created by the tribal authorities refuse to permit any party to a proceeding to establish citizenship and desiring to appeal from the decision of such tribunal or commission to withdraw the original papers for the purpose of filing the same in this court, such party may, upon petition to this court, setting forth the fact of such refusal, obtain an order of the court commanding such commission or tribunal, or the clerk or the secretary thereof, to surrender such papers and a transcript of the entries made therein, as heretofore provided.

Appeals in citizenship cases must be taken only at Aardmore, and, for the purpose of hearing and determining such cases,

6 the court at that place shall be deemed open at all times.

Any case, when submitted as required by these rules, may, in the discretion of the court, be transferred by the court, on the application of either party, to either Ryan, Chickasha, Purell, or Paul's Valley for hearing and determining when the court is in session at such places, but the decision of the court, when rendered,

and all papers in the case shall be filed with the clerk at Ardmore (Court Journal 9, page- 283, '4, '5).

7 Be it remembered that at a regular term of the United States court in the Indian Territory, southern district, at Ardmore, begun and holden on Monday, the 15th day of November, 1897, and on the 33rd day of said term, to wit, Wednesday, December 22nd, 1897—present and presiding, the Honorable Hosea Townsend, judge—the following, among other, proceedings were had, to wit:

RICHARD C. WIGGS ET AL.	} No. 27.
<i>vs.</i>	
CHICKASAW NATION.	

Comes now the applicants herein, by their attorney, and, after leave of the court first being had, file substituted application herein, together with one exhibit thereto, and also file substituted master's report and substituted supplemental master's report herein;

Which said substituted application is in words and figures as follows, to wit:

RICHARD C. WIGGS, for Benefit of Josie	} Application for Citizenship
Wiggs and Mary Edna Wiggs,	
<i>vs.</i>	
CHICKASAW NATION.	} Pending Before the Commission to the Five Civilized Tribes.

To the honorable commission:

Now comes your applicant, Richard C. Wiggs, and, with respect, alleges and shows that he is now and has been for about twenty-five (25) years a resident citizen of Pickens county, in the Chickasaw nation; that he is a white man and was prior to the 13th day of October, 1875, a citizen of the United States, though for

8 some time he had resided in said Pickens county, Chickasaw nation; that on the 13th day of October, 1875, he lawfully intermarried with one Georgia M. Allen, who was a native Chickasaw Indian and a full member of the Chickasaw tribe and was so recognized by said tribe; that said marriage was contracted and celebrated according to the laws and usages of the said Chickasaw nation; that in 1876 the said Georgia M., the said wife of this applicant, died; that by reason of said marriage and the constitution, laws, and usages of the Chickasaw nation this applicant became a citizen of said Chickasaw nation and a member of said tribe of Indians; that he has ever since been a resident citizen of said Pickens county, Chickasaw nation, and has ever since been recognized by the authorities of said Chickasaw nation as a legal citizen of said nation and as a member of said tribe, enjoying all the rights and privileges as such, except he was disqualified to hold the office of governor by reason of the provisions of the constitution of said Chickasaw nation; that on the 11th day of April, 18—, this applicant lawfully intermarried with one Josie Lawson, a white woman and United States citizen; that said mar-

riage was performed and celebrated in said Chickasaw nation and in accordance with the laws thereof, the said nation receiving the fees provided by law therefor; that there has been born unto this applicant and the said Josie one girl child, named Mary Edna Wiggs, aged nine (9) years; that by the constitution and laws of the said Chickasaw nation any by reason of the general laws of the land the said Josie became by her marriage with this applicant a citizen of said Chickasaw nation and a member of said tribe of Indians, and their child, the said Mary Edna, is also a citizen of said Chickasaw nation and a member of said tribe of Indians, but your applicant shows that the authorities of said nation refuse to recognize the said Josie, wife of this applicant, and the said Mary Edna as citizens of said nation and as members of said tribe of Indians, and deny to them all their rights as such, and refuse to enter their names upon their roll of citizenship. Your applicant further shows that since he has been the husband of the said Josie he has been the duly elected and qualified sheriff of Pickens county, holding and exercising authority under the government of the said Chickasaw nation; that he has also been a member of the legislature of the said Chickasaw nation, and that his rights as a citizen have never been denied by the said Chickasaw nation, but only the rights of his wife and child, as above stated.

Wherefore he prays that upon the hearing of this application that your honorable commission will enter the names of said Josie Wiggs and the said Mary Edna Wiggs upon the roll of citizenship of said Chickasaw nation, conferring upon them all the rights and privileges incident thereto.

— — —  
*Attorneys for Applicant.*

I, Richard C. Wiggs, do on oath state that the matters and things set forth in the above application are true, and that my post-office address is Oakland, Indian Territory.

— — —

Indorsed: "No. 27. Richard C. Wiggs *et al.* vs. Chickasaw Nation. Substituted application for citizenship. Filed in open court Dec. 22nd, 1897. C. M. Campbell, clerk."

10 And thereafterward, on the same day, to wit, December 22nd, 1897, was filed with the clerk of said court the substituted application of Richard C. Wiggs for the benefit of himself in said cause; which said substituted application is in words and figures as follows, to wit:

RICHARD C. WIGGS <i>vs.</i> CHICKASAW NATION.	}	Application for Citizenship Pending Before the Commission to the Five Civilized Tribes.
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To the honorable commission:

Now comes your applicant, Richard C. Wiggs, and with respect alleges and shows that he is a citizen of Pickens county, Chickasaw

nation; that he is a white man, and that prior to the year 1875 he was a citizen of the United States, residing in the Chickasaw nation; that on the 13th of October, 1875, he was lawfully married to one Georgia M. Allen, who was a native Chickasaw Indian, in the Chickasaw nation and according to the laws thereof; that in 1876 the said Georgia M. died; that ever since the marriage of this applicant with the said Georgia M. Allen he has resided in the Chickasaw nation and has claimed and exercised all the rights of citizenship enjoyed by citizens of said nation, and his citizenship has never been denied or questioned by the said Chickasaw government, but has always been recognized and approved, and for this reason this applicant did not apply for citizenship for himself when he made his recent application in behalf of his present wife and daughter; but the delay on the part of the Chickasaw government to furnish a roll of citizenship to this honorable commission has excited apprehension in the mind of this applicant that said roll may not be furnished at all, or if furnished that his name may not appear upon it, and for that reason he now makes application for himself, and in support of the same he refers to the evidence  
 11 on file before this commission in support of the application made by this applicant in behalf of his present wife and daughter.

Wherefore he prays that this application be granted, and that he be enrolled as a citizen of said nation on the roll prepared by this honorable commission.

POTTER & POTTER,  
*Attorneys for Applicant.*

I, Richard C. Wiggs, do on oath state that the matters and things set forth in the above and foregoing application are true, and that my post-office address is Oakland, Indian Territory.

R. C. WIGGS.

Sworn to and subscribed before me this 26th day of Aug., 1896.

[SEAL.]

J. E. GRINSTEAD,  
*Notary Public, 3rd Div., Southern District.*

Indorsed: "No. 27. Before the commission to the five civilized tribes. Richard C. Wiggs vs. Chickasaw Nation. Substituted application for citizenship. Filed in open court Dec. 22nd, 1897. C. M. Campbell, clerk."

12 Before the honorable commission to the five civilized tribes.  
 In the Matter of the Application for Enrollment in the Chickasaw Nation of RICHARD C. WIGGS.

*Exception to Application Filed Before Dawes Commission.*

Now comes the Chickasaw Nation, by its attorneys, and respectfully shows to this honorable commission that the application herein is insufficient in law.

Wherefore it prays that said application be dismissed.

Second. For further special exception the Chickasaw Nation respectfully shows to this commission that the evidence produced by the applicant is insufficient to show any claim of citizenship in the Chickasaw tribe of Indians.

Wherefore it prays that said application be dismissed.

Third. For further special exceptions the Chickasaw Nation shows that said application is insufficient, in that it shows that said applicant has not complied with the laws of said nation and therefore is not entitled to any of the rights, privileges, and immunities as such citizen.

Wherefore it prays that said application be dismissed.

THE CHICKASAW NATION,

*By Its Attorneys.*

13

RICHARD C. WIGGS ET AL. }

*vs.*

CHICKASAW NATION. }

No. 27.

Comes now W. B. Johnson herein, attorney for the Chickasaw Nation, and, after leave of court first being had, files its two substituted answers herein.

Which said answers are as follows, to wit:

Before the honorable commission to the five civilized tribes.

In the Matter of the Application of R. C. Wiggs *et al.* for Enrollment in the Chickasaw Nation.

Comes now the Chickasaw Nation, by its attorneys, and, without waiving any exception heretofore taken to the application filed herein, and without consenting to, but denying, the jurisdiction of this honorable commission to pass upon a question of citizenship in the Chickasaw tribe of Indians, presents this its answer to said application and respectfully represents:

First. The Chickasaw Nation admits that the applicant, R. C. Wiggs, married to Georgia M. Allen, who was a native Chickasaw Indian, but the Chickasaw Nation shows that such marriage was not according to the laws of the Chickasaw nation, and for that reason did not confer any rights of citizenship upon the said R. C. Wiggs.

Second. The Chickasaw Nation also shows that the marriage of the said R. C. Wiggs to his present wife was not solemnized according to the laws of the Chickasaw nation; that the present wife of the said Richard Wiggs is a white woman and citizen of the

14 United States, and that she acquired no right of citizenship by reason of the marriage with the said applicant, nor could the said Richard C. Wiggs confer any right of citizenship on his daughter, Mary Edna Wiggs.

Wherefore the Chickasaw Nation prays that said application be rejected.

THE CHICKASAW NATION,

*By Its Attorneys.*

Indorsed: "No. 27. Richard C. Wiggs *et al. vs.* Chickasaw Nation. Substituted answer. Filed in open court Dec. 22nd, 1897. C. M. Campbell, clerk."

15 And thereafterwards, to wit, on the 4 day of Feb'y, 1897, was filed in the office of the clerk of the United States court, southern district of Indian Territory, at Ardmore, the following judgment from the Dawes commission:

DEPARTMENT OF THE INTERIOR,  
COMMISSION TO THE FIVE CIVILIZED TRIBES,  
VINITA, INDIAN TERRITORY, — —, 1896.

RICHARD C. WIGGS ET AL.	} 170. Application of Richard C. Wiggs
<i>vs.</i>	
CHICKASAW NATION.	} Granted as an Intermarried Citizen.

Appealed.

Sustained.

I, H. M. Jacoway, Jr., secretary, do hereby certify that the above and foregoing is a true and correct copy of Chickasaw Record —, page —, of the commission to the five civilized tribes.

Given under my hand and official signature this — day of —, 1897.

H. M. JACOWAY, JR., *Secretary*,  
By HENRY STROUP.

The above and foregoing judgment is indorsed in words and figures as follows, to wit: Richard C. Wiggs *et al. vs.* Chickasaw Nation. Filed Feb. 4th, 1897. Jos. W. Phillips, clerk.

16 In the United States Court for the Southern District of the Indian Territory, at Ardmore.

RICHARD C. WIGGS ET AL., Plaintiff,	} Petition for Appeal to the
<i>vs.</i>	
CHICKASAW NATION, Defendant.	} U. S. Dist. Court for the
	} Southern Dist., Ind. Ter.

To the Honorable C. B. Kilgore, judge:

Comes now the Chickasaw Nation, feeling itself aggrieved by the decision of the Dawes commission in the above cause admitting certain applicants therein to citizenship, — hereby prays an appeal from said decision to this honorable court.

W. B. JOHNSON,  
*Attorney for Chickasaw Nation.*

The foregoing appeal is allowed this 2nd day of Jan'y, 1897.

C. B. KILGORE, *Judge.*

17 In the United States Court for the Southern District of the Indian Territory, at Ardmore.

RICHARD C. WIGGS ET AL., Plaintiff, }  
 vs. } Petition for Appeal to the  
 CHICKASAW NATION, Defendant. } U. S. Dist. Court for the  
 Southern Dist., Ind. Ter.

To the Honorable C. B. Kilgore, judge:

Comes now the applicants here, feeling themselves aggrieved by the decision of the Dawes commission in the above cause rejecting certain applicants, — hereby prays an appeal from said decision to this honorable court.

POTTER & POTTER,  
*Attorneys for Applicants.*

The foregoing appeal is allowed this 2nd day of Jan'y, 1897.

C. B. KILGORE, *Judge.*

18 In the United States Court in the Indian Territory, Southern District, at Ardmore.

RICHARD C. WIGGS ET AL. }  
 vs. } Notice of Appeal.  
 CHICKASAW NATION. }

To the Hon. Henry L. Dawes, chairman of the commission of the United States to the five civilized tribes of Indians.

SIR: You are hereby notified that an appeal has been granted in the matter of the application of Richard C. Wiggs *et al.* to be enrolled as members of the Chickasaw tribe of Indians from your commission to the United States court for the southern district, in the Indian Territory, at Ardmore. You are therefore notified and ordered to immediately forward to the clerk of this court all of the original papers filed, used, and considered in said cause by your commission, together with a duly certified copy of all orders, judgments, and entries made and entered by you in the trial and consideration of said cause.

Witness the Hon. C. B. Kilgore, judge of said court, and the seal thereof, at Ardmore, Indian Territory, this 2nd day of Jan'y, 1897.

[SEAL.]

JOS. W. PHILLIP-, *Clerk.*

19 And thereafterwards, to wit, on Friday, Jan'y 21st, 1898, present and presiding aforesaid, the following further proceedings in said cause were had, to wit:

RICHARD C. WIGGS ET AL., Plaintiff, }  
 vs. } No. 27. Plea to Jurisdiction.  
 CHICKASAW NATION, Defendant. }

Comes now the defendant, The Chickasaw Nation, and respectfully avers that this court has no jurisdiction to hear this cause, for the reason that the act creating the Dawes commission and the right



of this court to pass upon causes appealed to it from said commission, determining the question of citizenship in the Chickasaw nation, is unconstitutional and void; that said act gives this defendant no right to cross-examine the witnesses of the applicant, and the same is contrary to the treaty of 1866, entered into by the United States Government and the Chickasaw nation, by which said Chickasaw nation reserved the right to pass upon all matters concerning said tribe and all civil and political rights of the individual members thereof; that said treaty is still in full force and effect and was at the time of the act of Congress creating the commission to the five civilized tribes and authorizing this court to pass upon appeals from the same was enacted.

## II.

Because said act deprives the Chickasaw nation and the individual members thereof of property without due process of law.

## III.

Because said act is class legislation, in that the same deprives either party of an appeal, as in other cases, to the higher courts of the Territory and of the United States.

## IV.

Because the jurisdiction extended to this court has been limited to controversies between citizens of different tribes or between citizens or members of the tribe of Indians and a United States citizen, and expressly reserving to the Indians controversies arising between themselves.

## V.

Because if this court determines that the applicant is a member of said nation, it is then passing upon rights between citizens of the same tribe of Indians, and no judgment thereon can be entered for want of jurisdiction in this court.

Wherefore the defendant prays that said cause be dismissed for the above reasons, and that it go hence without day, etc.

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*Attorney for Chickasaw Nation.*

The above and foregoing is indorsed in words and figures as follows, to wit: "Richard C. Wiggs *et al.*, plaintiff, vs. Chickasaw Nation, defendant. Plea to jurisdiction. Filed in open court *nunc pro tunc* Dec. 20, 1897. C. M. Campbell, clerk."

20 RICHARD C. WIGGS, for the Benefit of  
 Mary Edna Wiggs and Georgia Ann  
 Wiggs, } Report of the Master  
 vs. in Chancery.  
 CHICKASAW NATION.

To the Honorable C. B. Kilgore, judge of said court:

In this case there is no controversy over the facts, which are as follows:

Richard C. Wiggs, a white man and citizen of the United States, on the 13th day of October, 1875, married Miss Georgia M. Allen, a member of the Chickasaw tribe of Indians by blood, in accordance with the laws of the Chickasaw nation governing the intermarriage of one of their members to a non-citizen. Mrs. Georgia Wiggs died on the — day of —, 1876. The applicant has been and now is a resident of the Chickasaw nation ever since his marriage with Georgia M. Allen. On the 11th day of April, 1886, Richard C. Wiggs was duly married to Miss Josie Lawson, a citizen of the United States, in accordance with the laws of the Chickasaw nation. There was born to them one child, the applicant, Mary Edna Wiggs; that ever since the first marriage Richard C. Wiggs has been recognized as a citizen of the Chickasaw nation. Richard C. Wiggs on the 30th day of August, 1896, filed an application before the commission for the United States to the five civilized tribes of Indians for the benefit of Josie and Mary Edna Wiggs, praying that their names be enrolled as members of the Chickasaw tribe of Indians. The application was denied on the — day of —, 1897, and this appeal was duly taken on the — day of —, 1897. On the 30th day of October, 1896, the Chickasaw Nation, through its attorney, filed an answer before said commission and admitted the material facts above stated. The answer further sets up that by reason of the second marriage Richard C. Wiggs has forfeited his membership of the Chickasaw tribe and prays that he be denied enrollment.

I wish to note here that Richard C. Wiggs is not before this court, and it has no jurisdiction in this case to pass upon his citizenship. The application was not filed for his benefit, but for the benefit of his wife and minor daughter. How defective this answer is, I shall proceed to examine the application upon its merits.

#### *Conclusions of Law.*

Are Mrs. Josie Wiggs and her daughter, Mary Edna Wiggs, entitled to enrollment? It would be fruitless to enquire into the relations that existed between the United States and the Chickasaw and Choctaw Indians before the 38th article of the treaty of 1866 was adopted. Sufficeth it to say that at the time of the Dancing Rabbit treaty between the United States and the Chickasaw and Choctaw Indians in 1830 the Chickasaws and Choctaws were the owners and in possession of large and valuable land interests in the States of Alabama and Mississippi; that by the terms of said treaty they

exchanged their lands in those States for the lands now owned and occupied by them in the Indian Territory. I make this observation to call the attention of the court to the fact that the Indian has received no bounty of the United States. So far as I have been able to ascertain, the Chickasaw and Choctaw races of Indians from time immemorial have been the sole judges of the membership of their tribes. Congress at no time has ever exercised any jurisdiction over this subject, except by the 38th article of the treaty of 1866. In 1855, in a constitutional provision, the legislature of the Chickasaw nation was given jurisdiction to adopt white people to membership of their tribe. By another provision, adopted at the same time, a non-citizen who intermarried with a Chickasaw was made a member of the tribe. Further evidence of this jurisdiction is found in section 7 of the Chickasaw constitution, adopted in 1867: "All persons other than Chickasaws who have become citizens of this nation by marriage or adoption and have been confirmed in all their rights as such by former conventions and all such persons as aforesaid who have become citizens by adoption, by legislature or by intermarriage," etc. It will be noticed that not only was this jurisdiction recognized under the constitution of 1855, but also prior to that date; so it is safe to say that the case at bar must be tried by the Chickasaw standard of membership, except so far as it is affected by the treaty — 1866. In 1876 the Chickasaw legislature passed the following act relating to citizenship:

"Sec. 3. Be it further enacted That no marriage heretofore solemnized or which may hereafter be solemnized between a citizen of the United States and a member of the Chickasaw nation shall enable such citizen of the United States to confer any right or privilege whatever in this nation by again marrying a citizen of the United States or their issue, and in case any citizen of the United States shall have married a member of the Chickasaw nation and shall have heretofore abandoned her or should hereafter voluntarily abandon or separate from such member of the Chickasaw nation, such citizen of the United States shall forfeit all rights acquired by such marriage in such nation, and shall be liable to removal as an intruder upon the limits thereof."

This statute, unless in conflict with higher law, is valid and must be adhered to by this court. It is insisted that the act is not only in violation of the treaty of 1866, article 38, but also of section 7 of the constitution of 1867. If in conflict with either, it is void, or if, as insisted, the constitution of the Chickasaw nation is one of delegated powers, and there is no power granted to the legislature which enacted such a statute, then it would be void. We will examine the last objection further. It is doubtless true that the Chickasaw government is one of delegated power in one sense of that term. It exists within the territorial limits of the United States and obtained all its powers as a government by treaties with the United States; but this is not the contention. It is insisted that by a constitutional enactment of its own the Chickasaw government created itself one of delegated power, a proposition involving an

absurdity upon its face. The courts in the United States  
 23 recognize two primary rules of construction. One applies to  
 acts of Congress, the other to acts of State legislature. The  
 General Government being one of delegated powers, before an act  
 of Congress can be considered valid there must be an express grant or  
 power or one of necessary implications; so, before an act of Congress  
 can be considered constitutional, authority for its enactment must be  
 found in the Constitution. A different rule obtains in regard to  
 the acts of the State legislature. The enquiry then is, Is the act in  
 violation of the State constitution? and not whether it is authorized  
 by it. We find the following in the Chickasaw constitution of  
 1867:

"SEC. 19. All rights and powers not herein granted or expressed  
 are reserved to the people, and any law that may be passed contrary  
 to the provisions of the constitution shall be null and void."

If the Chickasaws *have* had intended to create the restrictions  
 upon its legislative body, as insisted upon, we are at a loss to see  
 why this provision was incorporated, "and the law that may be  
 passed contrary to a provision of this constitution shall be null and  
 void." This demonstrates that the rule governing the acts of State  
 legislatures was intended to be adopted, and if any other intention  
 had have existed there would have been a qualifying clause declar-  
 ing all of the acts of the legislature void that were not passed in  
 conformity to some provision authorizing the same. We might  
 add that it is doubtful whether this court can adjudge an act of the  
 Chickasaw legislature void, there being no Federal question in-  
 volved. I therefore find that the statute of 1876 is not void for want  
 of authority in the Chickasaw legislature.

The next question is, Is the statute of 1876 in violation of either  
 article 38 of the treaty of 1866 or of the seventh section of the con-  
 stitution of 1867? The article is as follows:

"Any white person having married a Choctaw or Chickasaw re-  
 sides in the said Choctaw or Chickasaw nations, or who has been  
 adopted by the legislative authorities is to be deemed a member of  
 said nation, and shall be subject to the laws of the Choctaw and

24 Chickasaw nations, according to his domicile, and to prosecu-  
 tion and trial before their tribunals and to punishment accord-  
 ing to their laws, as though he were a native Choctaw or  
 Chickasaw." The seventh section of the constitution of 1867 is:

"All persons other than Chickasaws who have become citizens of  
 this nation by marriage or adoption, and have been confirmed  
 in all their rights as such by a former convention and all such  
 persons as aforesaid who have become citizens by adoption by the  
 legislature or by intermarriage with the Chickasaws since the adop-  
 tion of the constitution of August 18, 1856, shall be entitled to all  
 the rights, privileges and immunities of a native-born citizen, and  
 all who may hereafter become a citizen either by marriage or adop-  
 tion shall be entitled to all the privileges of a native-born citizen  
 without being eligible to holding the office of governor."

What do we understand by the words Choctaw and Chickasaw in  
 this treaty? In another form, does the term Chickasaw and Choc-

taw mean members of the tribe or do they mean Choctaw and Chickasaw Indians by blood? It is to be borne in mind that there are three classes of members of the Chickasaw tribe—members by blood, members by adoption, and members by intermarriage. It is true that in law members by marriage or adoption are Chickasaw Indians—that is, they are entitled to enjoy all the rights, privileges, and immunities of a Chickasaw Indian by blood. This is secured to them both by the treaty and the constitution. The terms Choctaw and Chickasaw are equivalent to Choctaw and Chickasaw Indians. Choctaw and Chickasaw are tribal terms that designate the particular tribe of Indians to which they belong. If it is true that the terms Choctaw and Chickasaw as used in the treaty and constitution are equivalent to the term Choctaw and Chickasaw Indians, the solution is clearly in an opinion of the Supreme Court of the United States written by C. J. Taney in 1884, in the case of *The United States vs. Rogers*. The defendant Rogers killed one Nichols in the Chickasaw nation and was indicted by the circuit court of

the United States for the district of Arkansas in 1845. The  
25 indictment alleged that both Rogers and the deceased were citizens of the United States and not members of any Indian tribe. The defendant pleaded to the jurisdiction of the court and alleged in his plea that both himself and deceased were intermarried citizens of the Cherokee nation, and that by the laws of that nation they were citizens and members of that tribe. There was a demurrer to the plea, and the opinion is upon it. The opinion is based upon the conclusion that the laws of the Cherokee nation was as stated in the plea. The following paragraph in the opinion is significant and pertinent to the question under consideration:

“By the 25th section of that act the prisoner, if found guilty, is doubtless liable to punishment unless he comes within the meaning of the exception contained in the proviso, which is that the provisions of that section shall not extend to the crimes committed by one Indian against the person or property of another Indian. We think it very clear that a white man who at mature age is adopted by and Indian does not thereby become an Indian, and was not intended to be embraced in the exception above mentioned. He may by such adoption become entitled to certain privileges in the tribe and make himself amenable to their laws and usages, yet he is not an Indian; yet the exception is confined to those who by the usages and customs of the Indians are regarded as belonging to their race. It does not speak of a member of the tribe, but of a race generally or of a family of Indians, and it is intended to govern them, both as regards their own tribe or other tribes also to be governed by Indian usages and customs.”

In 1867, when the Chickasaws incorporated article 38 of the treaty of 1866 into their constitution, they evidently so understood these terms. Sec. 7 of the constitution begins: “All persons other than Chickasaws who have become citizens of this nation by marriage or adoption,” etc. Here they clearly recognize the true meaning of the term Chickasaw as used in the treaty. It is therefore conclusive that by use of the term Chickasaw in

the treaty it was intended to mean a Chickasaw Indian by blood as contradistinguished to those members of the tribe who obtained their membership by adoption or intermarriage. It will be conceded by all that if the above conclusions are correct Mrs. Josie Wiggs and daughter cannot be admitted to enrollment through any right of their own emanating from the treaty of 1866 or the constitution of 1867, for the reason that they do not come within the terms of those instruments. If they are entitled to enrollment, it must be held by this court that the statute of 1876 was an invasion of the rights of the husband and father as secured by the treaty and constitution. The next inquiry, therefore, will be, Was the statute inimical to the rights of the intermarried husband and father? The fact that the second spouse and children of the intermarried citizen were not provided for in the treaty or constitution is significant, and it would appear but natural, had it been the intention of the framers or writer of these instruments to grant membership to this class of people, both one or the other of them would have thrown around them the safeguards that were given to the intermarried and adopted members, and could have their rights left to be determined upon the husbands' or wives' real or fancied power to confer such membership by marriage. Although I am convinced that these observations would be fatal to the alleged power to confer citizenship, but in the absence of the statute of 1876 the wife and child would be entitled to enrollment, but upon a different reason they will be noticed later on in this report. The reasoning upon the power to confer citizenship is that it is a valuable right to confer citizenship upon the spouse; that a Chickasaw by blood has the power to confer membership upon a non-citizen by marriage; that the treaty and constitution guarantees to intermarried members all of the rights of a Chickasaw by blood; that the statute of 1876 attempts to destroy the power of the intermarried citizen alone to confer citizenship by marriage, and is therefore void. The vice in this reasoning is apparent only upon close inspection. Nowhere in the treaty or constitution can be found the terms "confer citizenship," and we think that the other terms are highly misleading and arise from a radically erroneous view of the constitution and treaty. There is no such power given by one or the other of these instruments to either intermarried or adopted citizens of full-blood Chickasaw Indians. The correct view, in my humble judgment, is that the moment a Chickasaw Indian not a member of the Chickasaw tribe of Indians marries a non-citizen, that moment a non-citizen becomes a member of the tribe, and his or her citizenship is protected by the treaty and constitution. The membership is not conferred by the marriage directly, but is conferred directly by the treaty and constitution, and is not a right, power, or privilege, or immunity of the Indian citizen who marries. If the membership was conferred by marriage, then citizenship would become a subject-matter of contract. So far as I am aware, no government upon earth regards citizenship in such a light. It is wholly a creature of law and within the domain of law. These



reasons lead me to the conclusion that there is — nor cannot exist under the treaties, laws, and constitution of the Chickasaw nation as we now find them the right, vested in any member of the Chickasaw nation, by blood or otherwise—the right to confer citizenship by blood. It is the act of the law and not a right of a citizen. I am therefore of the opinion that in so far as this case is concerned the statute of 1876 is not in conflict with either the 38th article of the treaty of 1866 or section seven of the constitution of 1867, and it must furnish the rule for decision.

But it is *argued*, by way of argument, that in the event this rule is to be adopted the citizenship of the wife and children will be anomalous. There appears to be an erroneous view upon this subject prevalent among the members of the bar. When Richard C. Wiggs intermarried with Georgia M. Allen he was a citizen of the United States. Did he after this marriage cease to be such a citizen? Congress passed an act some years ago providing how a member of an Indian tribe who was not a citizen of the United States could become one. It also provided that any one availing himself of the opportunity of the act should lose no

28 Indian right as a member of his tribe. The attention of the court is hereby called to this act to show that Congress did not consider dual citizenship inconsistent. The familiar doctrine that when an individual becomes a citizen of a government, that relation remains unchanged until termination in one of three ways: by death, by forfeiture for crime, or by expatriation. Expatriate is defined to be to leave one's country, renouncing allegiance to it for the purpose of making a home and becoming a citizen of another country—Anderson's Dictionary. By this standard Richard C. Wiggs is still a citizen of the United States, so far as the facts in this case show. It may be true that by treaty the United States has surrendered jurisdiction in the Indian Territory of his person and property, yet his allegiance to the United States is unchanged, and his wife and child are also citizens of the United States. I wish to remark in this case that before the passage of — 1876 the wife would have become a member of the tribe. It was observed in Roff's case that the very passage of the statute of 1876 is conclusive evidence of what the law was before the passage of that act. It has been urged in argument that the class of applicants to which Mrs. Wiggs and daughter belong should be enrolled, because it is the policy of the United States to absorb the Indian race by miscegenation. Such seems to have been its policy, it is true, but to admit to enrollment this vast class of applicants would defeat the very object of such a policy. It would require but a few years more under such a scheme to make the real Indian a mere faction in his own government, and his lands would be allotted among aliens to his race when that prospective day arrives.

Indorsed: "No. 27. Richard C. Wiggs *et al.* vs. Chickasaw Nation. Report of master. Filed in open court Dec. 22nd, 1897. C. M. Campbell, clerk."



29 RICHARD C. WIGGS ET AL. }  
 vs. } Report of the Master in Chancery.  
 CHICKASAW NATION.

Now comes the master in chancery and begs to make the following supplemental report in the above case:

When I made my report in this case before I did not think the rights of Richard C. Wiggs were involved, but I afterwards learned that a proceeding had been filed in behalf of Wiggs, and by consent of the attorneys they were both to be considered together. Under the facts found in my original report and for reasons therein stated, I recommend that Richard C. Wiggs be admitted to citizenship in the Chickasaw nation.

W. H. L. CAMPBELL,  
*Master in Chancery.*

Indorsed: "No. 27. Richard C. Wiggs *et al.* vs. Chickasaw Nation. Substituted supplemental report of the master. Filed in open court Dec. 22nd, 1897. C. M. Campbell, clerk."

I, C. C. Potter, one of the attorneys for the applicant, do on oath state that the above and foregoing papers are substantial copies of the original papers in said cause.

C. C. POTTER.

Sworn — and subscribed before me this 24th day of December, 1897.

[SEAL.]

C. B. POTTER,  
*Notary Public in and for Cooke County, Texas.*

It is hereby agreed that the above and foregoing papers may be substituted for the original papers in the above cause, which were destroyed in the fire that burned the court-house at Ardmore. It is also agreed that the case was properly appealed from the Dawes commission by both the applicants and the Chickasaw Nation.

POTTER & POTTER,  
*Attorneys for Applicants.*  
 W. B. JOHNSON,  
*Att'y for Chickasaw Nation.*

30 Indorsed: "No. 27. Richard C. Wiggs *et al.* vs. Chickasaw Nation. Substituted papers. Filed in open court Dec. 22nd, 1897. C. M. Campbell, clerk."

31 Be it remembered that at a regular term of the United States court in the Indian Territory, southern district, at Ardmore, begun and holden on Monday, the 15th day of November, 1897, and on the 32nd day of said term, to wit, Tuesday, December 21st, 1897—present and presiding, the Hon. Hosea Townsend, judge—the following, among other, proceedings were had, to wit:

*Order.*

*In re* order of court allowing substitution of papers in citizenship cases.

The papers in a majority of the citizenship cases pending in this court having been burned and destroyed by fire on the morning of the 16th inst., it is ordered that the applicants in each and all of the said cases have until the 10th day of January, A. D. 1898, to substitute all their papers in the various cases, and that W. B. Johnson, attorney for the Chickasaw nation, have until February 1st, 1898, to substitute the papers of said nation (vol. A, Citizenship Record, pages 128 and 129).

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*Opinion by the Court.*

In the Southern District, Indian Territory.

TOWNSEND, J.

*In re* Indian Citizenship Cases.

COURT :

I have examined with some care the treaties between the United States Government and the Choctaws and Chickasaws, in order that I might become familiar with all the negotiations. The first treaties were made in 1786, separately with each tribe or nation, as they were called. Not, however, until 1820 was the subject mentioned of taking any land west of the Mississippi river. On October the 18th, 1820, near Doak's stand, on the Natchez road, a treaty was entered into between the Choctaws and the Government of the United States, in which it was stated in the preamble the purpose was "to promote the civilization of the Choctaw Indians by the establishment of schools amongst them; and to perpetuate them as a nation, by exchanging for a small part of their land here a country beyond the Mississippi river, where all who live by hunting and will not work may be collected and settled together." Whereupon, in part consideration of the ceding of a part of their reservation then existing, the Government ceded "a tract of country west of the Mississippi river, situate between the Arkansas and Red rivers," and by its boundaries being substantially the country now embraced in the Choctaw and Chickasaw nations. In 1825 another treaty was entered into between the Choctaw nation and the Government, by which the Choctaws ceded to the Government all the land ceded to them in 1820, "lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence due south to Red river;" in consideration for which the Government undertook to remove certain settlers, citizens of the United States, from the west to the east side of said line, and to pay certain money consideration for a series of years, and

33

certain other provisions not material for consideration in this connection.

On September 27th, 1830, another treaty was entered into between the Choctaws and the Government, in the preamble to which it is recited that "the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws. Now, therefore, that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi, they have determined to sell their lands east of the Mississippi."

It is provided that in consideration that the United States "shall cause to be conveyed to the Choctaw nation a tract of country west of the Mississippi river, in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it," they "cede to the United States the entire country they own and possess east of the Mississippi river, and they agree to remove beyond the Mississippi river."

Under the 14th article it is provided that each head of a family who desires to remain shall have a reservation, and then states that "persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

On the 22nd day of June, 1855, a treaty was entered into between the Choctaws, Chickasaws, and the Government, and this was the first treaty at which all three were represented. Its purpose was declared to be "a readjustment of their relations to each other and to the United States," and for a relinquishment by the Choctaws of

34 "all claim to any territory west of one hundredth degree of west longitude." In the first article of said treaty it is provided that "pursuant to act of Congress approved May 28th, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common."

On the 28th of April, 1866, another treaty was entered into between the Choctaws, Chickasaws, and the United States. This treaty seems to have been necessitated by the changed condition of affairs that resulted from the war of the rebellion and attempts to arrange civil government for the Choctaws and Chickasaws and an allotment of their lands in severalty. It provides for the survey and platting of the lands, and that, when completed, the maps, plats, etc., shall be returned to a land office that was to be established at Boggy Depot for the inspection by all parties interested, and that a notice shall be given for a period of ninety days of such return by the legislative authorities of said nations or, upon their failure, by the register of the land office; and in article 13 it is provided that the notice shall be given, not only in the Choctaw and Chickasaw nations, "but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas, and Alabama, to the end that such Choctaws and Chickasaws

as yet remain outside of the Choctaw and Chickasaw nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: Provided, that before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become *bona fide* residents in the said nation within five years from the time of the selection; and should the said absentee fail to remove into said nation and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be cancelled and the land thereafter shall be discharged from all claims on account thereof."

This is the last treaty entered into between the Choctaws and the Chickasaws and the United States, but as late as December 24th, 1889, the council of the Choctaw nation passed a resolution calling upon Congress to defray the expense of moving the Choctaws in Mississippi and Louisiana to the Choctaw nation.

It was not until 1832 that the Chickasaws took any steps by treaty to move west. On October 20th, 1832, a treaty was entered into between the Chickasaws and the United States. In the preamble it is set forth that, "being ignorant of the language and the laws of the white man, they cannot understand or obey them. Rather than submit to this great evil, they prefer to seek a home in the west, where they may live and be governed by their own laws."

In the first article of said treaty it is provided that "the Chickasaw nation do hereby cede to the United States all the land which they own on the east side of the Mississippi river, including all the country where they at present live and occupy."

It is provided by said treaty that their lands shall be surveyed and sold and the proceeds held for their benefit, and they would hunt for a country west of the Mississippi river, and in the 4th article it is provided: "But should they fail to procure such a country to remove to and settle on, previous to the first public sale of their country here, then, and in that event, they are to select out of the surveys a comfortable settlement for every family in the Chickasaw nation, to include their present improvements;" and in the supplementary articles entered into October 22nd, 1832, it is provided "that whenever the nation shall determine to move from their present country, that every tract of land so reserved in the nation shall be given up and sold for the benefit of the nation."

On May 24, 1834, another treaty was entered into between the Chickasaws and the United States, making some different provisions about the sale of their lands, but no change in the general purpose.

On January 17, 1837, a convention and agreement was entered into between the Chickasaws and the Choctaws, subject to the approval of the President of the United States, by the terms of which the Chickasaws agree to pay the Choctaws the sum of \$530,000.00 for the territory that they now occupy. Excepting a treaty between

the Chickasaws and the United States, adopted June 22nd, 1852, in regard to the disposition of their lands east of the Mississippi river, we are brought down in the history of the treaties of the Chickasaws to the treaty of 1855, heretofore mentioned, between the Choctaws, Chickasaws, and the United States.

In all these various treaties, solemnly entered into, there is not one line or word to indicate that the Choctaws and Chickasaws who did not remove to the western country were not Choctaw or Chickasaw citizens and members of their respective tribes; on the other hand, in the treaty of 1830, between the Choctaws and the United States, it is expressly provided that those who remained should "not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

When it was supposed that the lands would be allotted in severalty under the treaty of 1866 it was expressly provided that notice should be published in the papers of several States that absent Choctaws and Chickasaws might come in and obtain the benefits of the allotment, and absentees were to be allowed five years to occupy and commence improvements, and all that was necessary was to satisfy

the register of the land office that that was their intention.  
37 The allotment did not take place, but if they had not come in they were only to lose their allotment of land; it did not make them any the less Choctaws or Chickasaws or members of the Choctaw and Chickasaw tribes.

It has been said that they could not be put upon the roll as citizens and members of those tribes unless they lived upon the land within the Choctaw or Chickasaw nation. I submit that the action of the Choctaw and Chickasaw nations themselves, when making the treaty of 1866, don't bear out that view, and if they were Choctaws and Chickasaws in 1866, what has occurred to change their relations to those tribes? I have heard of nothing whatever.

It is said that the land was held in common, and certainly some of the tenants in common in possession could hold the possession for all their cotenants in common. The bulk of the nation living in the Territory ceded and maintaining the tribal government or nation certainly met every requirement of residence and was a compliance in all respects with the treaty stipulations of living on the land.

I shall hold that non-resident Choctaws and Chickasaws who have properly filed their application and established their membership of the tribes shall be admitted to the roll as citizens.

Who is an intermarried citizen and who is an adopted citizen of the Choctaw and Chickasaw nations?

Article 38 of the treaty of 1866 is as follows:

"Every white person, who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nations, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations, according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects, as though he was a native Choctaw or Chickasaw."

Does this article apply to future marriages and adoptions  
 38 or only those prior to its adoption? By article 26 of said  
 treaty it is provided in regard to the rights to take land in  
 severalty as follows:

Article 26.

"The right herein given to Choctaws and Chickasaws respectively, shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such."

Under section 7 of the general provisions of the Chickasaw constitution, adopted August 16th, 1867, both as originally adopted and as amended, said sections can have but one construction, and that, that they regarded the said 38th article as binding on their future action, and if this is so, it would not be within the power of either the Choctaw or Chickasaw nations to pass or adopt any constitution or law in violation of said article, or that would take away the rights, privileges, or immunities that has attached to any white person under and by virtue of its provisions.

Under the constitution of the Chickasaws above referred to, section 10 of the general provisions gives the legislature power to admit or adopt as citizens of said nations "such persons as may be acceptable to the people at large."

This authority had been exercised frequently by the legislature of both nations, as I am informed, prior to the adoption of said treaty as well as subsequent to its adoption.

On October 19th, 1876, the legislature of the Chickasaws passed an act in relation to marriage between citizens of the United States and a member of the Chickasaw tribe or nation of Indians. The second section, among other things, provides: "Hereafter no marriage between a citizen of the United States and a member of the

Chickasaw nation shall confer any right of citizenship, or  
 39 any right to improve or select lands within the Chickasaw nation, unless such marriage shall have been solemnized in accordance with the laws of the Chickasaw nation."

This act was amended September 24th, 1887, in some particulars, but the above-quoted provision was retained.

Amongst all civilized nations it is conceded to be a right that each nation, and in the United States that each State, can exercise and determine by their laws the requirements to be observed in solemnizing marriages; but marriage among civilized nations does not confer citizenship. Under the Choctaw and Chickasaw law it does; besides, it is supposed to carry with it certain property rights. The general rule among civilized nations is that a marriage good where solemnized is good everywhere; but in some States, where marriage is prohibited between certain races of people, they have not been recognized, though they were lawful where solemnized. I think it is within the power of the Choctaw and Chickasaw nations to say by legislation that before a white person shall become one of their citizens, with all the privileges of one, they shall be married according to the forms and requirements of their laws, and tha



such legislation is not in violation of the 38th article of the treaty of 1866; but when a white person has married a Choctaw or Chickasaw according to their laws and resides in the Choctaw or Chickasaw nations, he is in all respects "as though he was a native Choctaw or Chickasaw," and his rights under the treaty attaches, and it is not within the power of the Choctaw or Chickasaw nation to take the same away by legislation or otherwise. It has been said that when adoption takes place by an act of their legislature, the same power that granted can take away. I doubt this proposition, if by the adoption treaty rights have attached, and I am firmly of the opinion that property rights that have attached under the treaty cannot be taken away, and that only political rights could thus be abrogated.

40 Along the lines herein indicated the citizenship cases pending in this court will be disposed of.

HOSEA TOWNSEND, *Judge*.

41 Be it remembered that at a regular term of the United States court in the Indian Territory, southern district, at Ardmore, begun and holden on Monday, the 15th day of November, 1897, and on the 33rd day of said term, to wit, Wednesday, December 22nd, 1897—present and presiding, the Honorable Hosea Townsend, judge—the following, among other, proceedings were had, to wit:

42 In the United States Court in the Indian Territory, Southern District, at Ardmore.

RICHARD C. WIGGS ET AL.	} Judgment.
vs.	
CHICKASAW NATION.	

Now this cause came on to be heard upon the report of the master in chancery herein, as well as upon the entire record, with all the evidence therein contained; and the court, being fully advised in the premises, is of opinion that the said master's report should be corrected in so far as it attempts to exclude any of the applicants herein to citizenship in the Chickasaw nation; and, as thus corrected, the court is of opinion that the said master's report should be in all things confirmed, and it is so ordered.

The court finds that all of the applicants are entitled to be enrolled as Chickasaw Indians, it appearing to the court that the said Richard C. Wiggs, being a white man and citizen of the United States, was married in the year 1875 to Georgia M. Allen, who was a native Chickasaw Indian by blood. Said marriage was solemnized according to the laws of the Chickasaw nation; that in the year 1876 the said wife of the said Richard C. Wiggs died; that from and after said marriage the said Richard C. Wiggs continued to reside in the Chickasaw nation and to claim the rights of citizenship in said nation, and as such he served in the Chickasaw legislature, and was also sheriff of Pickens county, in said nation; that in the year 1886 the said Richard C. Wiggs was lawfully married,



according to the laws of the Chickasaw nation, to Miss Josie Lawson, and that ever since said marriage the said Wiggs and his present wife have resided in the Chickasaw nation and claimed the rights of citizenship therein, and that there has been — unto them a daughter, Mary Edna Wiggs.

It is therefore considered, ordered, and decreed that the said Richard C. Wiggs and his wife, the said Josie Wiggs, and  
43 their daughter, the said Mary Edna Wiggs, be, and they are hereby, admitted to citizenship in the Chickasaw nation and to enrollment as members of the tribe of Chickasaw Indians, with all the rights and privileges appertaining to such relation; and it is further ordered that this decree be certified to the Dawes commission for their observance. It is further ordered that the plaintiff do have and recover of the said Chickasaw nation all costs in this behalf expended; to all of which the defendant excepts.

44 And thereafterwards, to wit, on Wednesday, December 22nd, 1897, present and presiding aforesaid, the following further proceedings in said cause were had, to wit:

RICHARD C. WIGGS ET AL., Plaintiff,	} No. 27. Motion for a New Trial.
vs. CHICKASAW NATION, Defendant.	

Now comes the defendant, Chickasaw Nation, and respectfully moves the court to set aside the judgment heretofore rendered in this cause for the following reasons, to wit:

First. Because the judgment was contrary to law.

Second. Because the same was contrary to the evidence.

Wherefore it prays that said judgment be set aside and held for naught.

#### CHICKASAW NATION.

The above and foregoing is indorsed in words and figures as follows, to wit: "R. C. Wiggs *et al.* vs. Chickasaw Nation. Motion for a new trial. Filed in open court Dec. 22, 1897. C. M. Campbell, clerk."

45 And thereafterwards, to wit, on Monday, March 7th, 1898, present and presiding aforesaid, the following further proceedings in said cause were had, to wit:

R. C. WIGGS ET AL., Plaintiff,	} No. 27. Order Overruling Plea to the Jurisdiction and Motion for a New Trial.
vs. CHICKASAW NATION, Defendant.	

On this 7th day of March, 1898, came on to be heard the defendant's plea to the jurisdiction of the court herein and its motion for a new trial, and the court, after hearing said plea and motion, is of the opinion that the same should be and is in all things overruled and denied; to which judgment of the court the defendant duly excepted.

46 And at the April, 1898, term of said court, to wit, on the 11th day of July, 1898, present and presiding the Hon. Hosea Townsend, judge, the following, among other, proceedings were had, to wit:

RICHARD C. WIGGS ET AL. }  
*vs.* } No. 27. Order of Substitution.  
 CHICKASAW NATION. }

It appearing to the court by the affidavit of William B. Johnson, attorney for the Chickasaw Nation, that some of the papers in the hereinafter-styled cause were destroyed by fire, and that the same were not substituted prior to the judgment rendered in this court, it is ordered that the said record be supplied, in order that the record of appeal may be in all things complete.

(Signed) HOSEA TOWNSEND, *Judge.*

(Court Journal, vol. 11, pp. 114, 115, and 116.)

RICHARD C. WIGGS ET AL. }  
*vs.* } No. — Application for Appeal.  
 CHICKASAW NATION. }

Thereupon the said defendant in said cause, the said Chickasaw Nation, deeming itself aggrieved by the said decree made and entered of record on the 22 day of Dec., 1897, appeals from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) W. B. JOHNSON,  
*Solicitor for Defendant.*

This 11th day of July, 1898.

47 And thereafterwards, on the 50th day of said term, to wit, on the 11th day of July, 1898, was filed with the clerk of this court the assignment of errors in this cause; which assignment of errors is in words and figures as follows, to wit:

In the United States Court for the Southern District of the Indian Territory, at Ardmore.

RICHARD C. WIGGS ET AL., Plaintiff, }  
*vs.* } Assignment of Errors.  
 CHICKASAW NATION, Defendant. }

The defendant in this action, in connection with his petition for appeal, makes the following assignment of errors, which he avers occurred upon the trial of this cause, to wit:

First. The court erred in holding that the act of Congress creating the commission to pass upon citizenship of applicants in the Chicka-

saw nation and their right to appeal to said court was constitutional.

Second. The court erred in overruling the plea to the jurisdiction of the Dawes commission and said court to pass upon the citizenship of the applicants herein.

Third. The court erred in holding that the laws, customs, and usages of the Chickasaw nation did not control and govern the admission of the applicants to citizenship.

Fourth. The court erred in holding that the Chickasaw nation did not have a right to pass a law relative to citizenship in the Chickasaw nation when said law in any way modified or changed a treaty of said Chickasaw nation with the United States.

Fifth. The court erred in holding that the applicant herein, who had failed to comply with the laws of the Chickasaw nation regulating his citizenship therein, was still entitled to all the  
48 rights and immunities of a citizen and entitled to be enrolled as such.

Sixth. The court erred in holding that it was unnecessary for the applicant, in order to retain his citizenship in the Chickasaw nation, which he had acquired by the laws of said nation by marriage into the said tribe, to further comply with the laws of said nation by not again marrying any United States citizen.

Seventh. The court erred in holding that a United States citizen could marry a Chickasaw citizen by blood, according to their laws, and become a citizen thereof, and after the death of said Chickasaw Indian that the said United States citizen could marry another United States citizen, according to the laws of the Chickasaw nation, and thereby confer the right of citizenship in the said Chickasaw nation upon the second spouse and the issue thereof, and so on to all succeeding issues.

Eighth. The court erred in holding that the United States citizen acquiring citizenship in the Chickasaw nation did not forfeit his right to citizenship by again marrying a United States citizen.

Ninth. The court erred in holding that a United States citizen who had married a Chickasaw Indian and acquired citizenship in said nation by reason of said marriage did not forfeit the same when he had been divorced from his Indian wife.

Tenth. The court erred in holding that any United States citizen divorced from an Indian wife had the right to confer citizenship in the said Chickasaw nation upon the second wife, who was a United States citizen, and the issue thereof.

Eleventh. The court erred in holding that where a United States citizen had married an Indian citizen according to the laws of the Chickasaw nation, and the Indian citizen died, the United States citizen could confer the right of citizenship in the Chickasaw nation on the issue of the second marriage with a United States citizen not  
in accordance with the laws of the Chickasaw nation.

49 Twelfth. The court erred in holding that when a United States citizen whose Chickasaw Indian wife had either died or been divorced from him, and he had then married a United States citizen, that the issue of said second marriage, by marrying

according to the Chickasaw laws, could confer citizenship upon the spouse and children of said issue.

Thirteenth. The court erred in that, after the papers in this cause were destroyed, an order was made that such papers be substituted within a certain date during the term of court in which said order was made.

Fourteenth. The court erred in overruling defendant's exceptions to the report of the master in chancery.

Fifteenth. The court erred in granting this divorce upon the substituted pleadings and evidence of the plaintiff alone, the pleadings and evidence of both plaintiff and defendant having been destroyed.

Sixteenth. The court erred in granting a decree upon the report of the master in chancery alone.

Seventeenth. The court erred in overruling a motion of the defendant for a new trial.

Eighteenth. The court erred in referring this cause to a master in chancery.

Nineteenth. The court erred in granting a decree for the plaintiff herein.

W. B. JOHNSON,  
*Att'y for Chickasaw Nation.*

Indorsed: "No. 27. Richard C. Wiggs *et al.* vs. Chickasaw Nation. Assignment of errors. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

50 And thereafterwards, to wit, on the 11th day of July, 1898, there was filed in the clerk's office of the United States court, southern district, at Ardmore, the following appeal bond; which bond is in words and figures as follows, to wit:

RICHARD C. WIGGS ET AL., Plaintiff,	} No. 27. Bond on Appeal.
<i>vs.</i>	
CHICKASAW NATION, Defendant.	

Know all men by these presents that we, The Chickasaw Nation, as principal, and R. M. Harris, gov., and Richard McLish and Walter Colbert, as sureties, are held and firmly bound unto the plaintiff, Richard C. Wiggs *et al.*, in the full and just sum of 100 dollars, to be paid to the said plaintiff, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a court of the United States for the southern district of the Indian Territory, in a suit pending in said court between Richard C. Wiggs *et al.*, plaintiff, and The Chickasaw Nation, defendant, a decree was rendered against the said Chickasaw Nation, and the said Chickasaw Nation having obtained an appeal and filed

a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Richard C. Wiggs *et al.*, citing and admonishing them to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, in the month of October next:

Now, the condition of the above obligation is such that if the said Chickasaw Nation shall prosecute said appeal to effect and answer all damages and costs if *he* fail to make this said plea good, then the above obligation is to be void; otherwise to remain in full force and effect.

CHICKASAW NATION.

R. M. HARRIS, *Gov.*

RICHARD McLISH.

WALTER COLBERT.

Sealed and delivered in the presence of—

FRED C. CARR.

PHIL BARRETT.

Approved by—

HOSEA TOWNSEND,

*Judge of the United States Court for the Southern  
District of the Indian Territory.*

The above and foregoing bond is indorsed in words and figures as follows, to wit: "Richard C. Wiggs *et al.* vs. Chickasaw Nation. Defendant's bond. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

51 The foregoing claim of appeal is allowed and bond for costs fixed at \$100.

(Signed)

HOSEA TOWNSEND, *Judge.*

This 11th day of July, 1898.

(Court Journal, vol. 11, pp. 114, 115, and 116.)

RICHARD C. WIGGS ET AL. }

*vs.*

CHICKASAW NATION. }

No. 27. Order.

Thereupon, upon motion of William B. Johnson, attorney for the Chickasaw Nation, it is ordered that the defendant have ninety days in which to prepare and file its bill of exceptions.

(Signed)

HOSEA TOWNSEND, *Judge.*

(Court Journal, vol. 11, pp. 114, 115, and 116.)

RICHARD C. WIGGS ET AL. }

*vs.*

CHICKASAW NATION. }

No. 27. Order Granting Extension  
of Time for Return Day.

Thereupon comes William B. Johnson and moves the court that the return day of the citation in this cause be extended sixty days, and it appearing to the court that, owing to the great number of

cases to be appealed by the Chickasaw Nation, it would be impossible to immediately perfect the appeal by said nation in all of said cases, it is ordered that the return day of said citation be extended sixty days.

(Signed)

HOSEA TOWNSEND, Judge.

(Court Journal, vol. 11, pp. 114, 115, and 116.)

52 THE UNITED STATES OF AMERICA, ss :

To Richard C. Wiggs *et al.*, Greeting :

Whereas the Chickasaw Nation has lately appealed to the Supreme Court of the United States from a decree lately rendered in the United States court for the southern district of the Indian Territory, made in favor of you, the said Richard C. Wiggs *et al.*, and has filed the security required by law :

You are therefore cited to appear before the said Supreme Court, at the city of Washington, on the first day of the fall term next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Ardmore, in the southern district of the Indian Territory, this 11th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

HOSEA TOWNSEND,

Judge of the United States Court for the Southern District  
of the Indian Territory.

Original.

I hereby, this 21st day of July, 1898, accept due personal service of this citation on behalf of Richard C. Wiggs *et al.*, appellees.

POTTER & POTTER,

Solicitors for Appellees.

[Endorsed :] # 27. Richard C. Wiggs *et al.* v. Chickasaw Nation. Citation. Original. Filed in open court Jul- 11, 1898. C. M. Campbell, clerk.

53 And thereafterwards, on the 11th day of July, 1898, was filed with the clerk of the United States court for the southern district of the Indian Territory the following affidavit for substitution of papers, to wit :

RICHARD C. WIGGS ET AL., Plaintiff,	} Affidavit for Substitution of Papers.
vs. CHICKASAW NATION, Defendant.	

Comes now William B. Johnson, attorney for the Chickasaw Nation, who, being duly sworn, upon oath deposes and says :

That in the above numbered and styled cause a great many of the papers were destroyed by fire and have not been substituted, and that said record is incomplete, and the appeal cannot be perfected without the same are supplied.

WM. B. JOHNSON.



Subscribed and sworn to before me this 9th day of July, 1898.

[SEAL.]

PHIL BARRETT,

Notary Public.

The above and foregoing affidavit is endorsed in words and figures as follows, to wit: "No. ——— vs. Chickasaw Nation. Affidavit for substitution of papers. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

54 And thereafterward, to wit, on the 29 day of Sept., 1898, was filed with the clerk of this court the bill of exceptions in said cause; which said bill of exceptions is in words and figures as follows, to wit:

In the United States Court for the Southern District of the Indian Territory, at Ardmore.

RICHARD C. WIGGS ET AL., Plaintiffs,	} Bill of Exceptions.
vs.	
CHICKASAW NATION, Defendant.	

Be it remembered that on the 15 day of Aug., 1896, Richard C. Wiggs *et al.* filed with the Dawes commission, at Vinita, Indian Territory, their application for citizenship in the Chickasaw nation.

That thereafter, to wit, on the 1 day of Sept., 1896, the Chickasaw Nation filed with the said Dawes commission its answer to the application of the said Richard C. Wiggs *et al.*, in which the said Chickasaw Nation, after objecting to and denying the jurisdiction of the said Dawes commission to pass upon a question of citizenship in the Chickasaw tribe of Indians, did answer in detail the allegations of the applicants.

That thereafter, to wit, on the 15 day of Nov., 1896, said Dawes commission admitted the applicant, Richard C. Wiggs, to citizenship in the Chickasaw nation, but denied the same to his second wife and to the issues of said second marriage; to which admission of the said Richard C. Wiggs the Chickasaw Nation then and there excepted.

That thereafter, to wit, on the 15 day of Dec., 1896, plaintiffs did appeal from the decision of the said Dawes commission, and defendant did cross-appeal from the same, said appeals being each duly perfected.

55 Be it further remembered that on the 8 day of Dec., 1896, an order was made referring this cause to a master in chancery; to which order of the court the defendant objected, and said objection being overruled, the defendant then and there duly excepted and still excepts.

And thereafter, to wit, on the 21 day of May, 1897, said cause having been referred, as aforesaid, to a master in chancery, which was heard before said master in the town of Ardmore, and after hearing the same the said master found the said Richard C. Wiggs to be a citizen of the Chickasaw nation, but rejected the second wife of the said Richard C. Wiggs and the issue of the said second mar-



riage; to which report admitting the said Richard C. Wiggs the defendant then and there duly excepted.

Said exceptions to the master's report are in words and figures as follows, to wit:

In the United States Court for the Southern District of the Indian Territory, at Ardmore.

RICHARD C. WIGGS ET AL., Plaintiffs,	}	Exceptions to Master's Report.
CHICKASAW NATION, Defendant.		

Comes now the Chickasaw Nation, by its attorney, and respectfully excepts to the report made by the master in said cause, because,

First. Same is not supported by the evidence.

Second. The decision is not in conformity with the law in force governing such cases in the Chickasaw nation, Indian Territory.

Wherefore it prays that said report be disapproved and the applicants rejected.

W. B. JOHNSON,  
*Attorney for Chickasaw Nation.*

That thereafter, to wit, on the 22 day of Dec., 1897, when said exceptions came on to be heard by the court, the same were overruled; to which the defendant objected, and said objection being overruled, the defendant then and there excepted and still excepts.

Be it further remembered that on the 20 day of Dec., 1897, the defendant filed its plea to the jurisdiction of the Dawes commission and of this court to pass upon appeals from the said Dawes commission for reasons stated in said plea; which plea being by the court overruled, the defendant objected, and said objection being overruled, the defendant then and there excepted and still excepts.

56 Be it further remembered that on the 22 day of Dec., 1897, the above cause came on to be heard before the Honorable Hosea Townsend, judge of the above court; whereupon came the plaintiffs and the defendant, by its attorney, and the following, among other, proceedings were had, to wit:

Plaintiffs introduced the following testimony:

57 INDIAN TERRITORY, }  
Chickasaw Nation. }

Personally appeared before me, the undersigned authority, I. O. Lewis, who deposes as follows:

I am a citizen of the Chickasaw nation and a member of said tribe of Indians, and at present hold the office of attorney general of said Chickasaw government; that I have known Richard C. Wiggs for about eighteen (18) or twenty (20) years; that I do not know, of my own knowledge, that the said Richard C. Wiggs was ever married to Georgia M. Allen, but I do know, by general repute in the neighborhood, that he was so married. I further state that during the

time that I have known the said Richard C. Wiggs he has been recognized by the Chickasaw government as a lawful citizen of the said Chickasaw nation, and as such has held the office of sheriff of Pickens county, in said nation, and in fact has enjoyed all the rights and privileges of a citizen of that nation. I further state that I know that the said Richard C. Wiggs, in about 18—, was lawfully married to Josie Lawson, and that they have ever since lived in Pickens county, in the Chickasaw nation, as husband and wife; that their marriage was consummated under and in accordance with the laws of the Chickasaw nation. I further state that the said Richard C. Wiggs and his present wife, Josie, have one child, Mary Edna Wiggs, aged about nine (9) or 10 years. I further state that I am in no way related to either of the above parties and have no interest in the result of the application of the said Wiggs for his said wife and child.

Sworn to and subscribed this — day of —, 1896.

58 Plaintiffs here closed their testimony and rested their case; whereupon the defendant, in addition to its answer in this cause before the Dawes commission, did introduce the following exceptions; which exceptions were heretofore introduced before the said commission, and being by said commission overruled, the defendant excepted.

59 Before the Honorable Commission to the Five Civilized Tribes.

In the Matter of the Application for Enrollment in the Chickasaw Nation of RICHARD C. WIGGS.

Now comes the Chickasaw Nation, by its attorneys, and respectfully shows to this honorable commission that the application herein is insufficient in law.

Wherefore it prays that said application be dismissed.

Second. For further special exception, the Chickasaw Nation respectfully shows to this commission that the evidence produced by the applicant is insufficient to show any claim of citizenship in the Chickasaw tribe of Indians.

Wherefore it prays that said application be dismissed.

Third. For further special exceptions the Chickasaw Nation shows that said application is insufficient, in that it shows that said applicant has not complied with the laws of said nation, and therefore is not entitled to any of the rights, privileges, and immunities as such citizen.

Wherefore it prays that said application be dismissed.

THE CHICKASAW NATION,

*By its Attorneys.*

Said exceptions were overruled by the court; to which judgment of the court the defendant then and there excepted and still excepts

60 This being all the testimony introduced upon the trial of the cause by either plaintiffs or defendant, the court rendered its decision in favor of the plaintiffs; to all of which decree and the rendition thereof the defendant then and there, in open court, duly excepted and still excepts.

Be it further remembered that on the 22 day of Dec., 1897, the defendant presented to the court its motion for a new trial for reasons set forth in said motion; which motion was on March 7, 1898, by the court overruled, and to which judgment of the court in overruling said motion the defendant then and there duly excepted and still excepts.

And now comes the defendant on this 29 day of Sept., 1898, and within the ninety days allowed by the judge of this court for filing this bill of exceptions, and tenders this its bill of exceptions, and prays that the same be allowed, signed, sealed, and made a part of the record in this cause, which is accordingly done.

[Seal United States Court in the Indian Territory, Southern District.]

HOSEA TOWNSEND,  
*Judge of the United States Court in and for the  
Southern District of the Indian Territory.*

61 UNITED STATES OF AMERICA, }  
*Indian Territory, Southern District.* }

I, C. M. Campbell, clerk of the foregoing district and Territory, do hereby certify that the foregoing 60 pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of the said court, in the case of The Chickasaw Nation, appellant, vs. Richard C. Wiggs *et al.*, appellee-, No. 27, as the same remain upon the files and records of the United States court, Indian Territory, southern district, at Ardmore.

I further certify that the original citation in said cause, with the admission of service thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Ardmore, this 29th day of September, 1898.

[Seal United States Court in the Indian Territory, Southern District.]

C. M. CAMPBELL,  
*Clerk of the United States Court, Southern District,  
Indian Territory.*

Endorsed on cover: Case No. 17,081. Indian Territory U. S. court. Term No., 496. The Chickasaw Nation, appellant, vs. Richard C. Wiggs *et al.* Filed October 28th, 1898.